Supreme Court, U.S.
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124 (D)

Docket no. _____

THE SUPREME COURT OF

THE UNITED STATES

JUNE FOSTER,
Petitioner,

v.
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT,
Respondent ,

GRANITE BROADCASTING
CORPORATION, ET AL
Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

June Foster
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QUESTIONS PRESENTED

Is it Constitutional if the United States Court of Appeals sua ponte dismisses an appeal of a litigant already granted informa pauperis status, because litigant has asked for appointment of counsel?

Was it a civil rights violation under the Constitution for the United States Court of Appeals to deny informa pauperis litigant relief from sua ponte dismissal, and issue a premature mandate, and provide no legal reason?

PARTIES TO PROCEEDING

June Foster, pro se informa pauperis litigant, petitions for a Writ of Certiorari to review the sua ponte dismissal of the United States Court of Appeals For The Second Circuit. June Foster: P.O. Box 2134 San Leandro, CA 94577. 510-614-8156.

Representing Respondent United States Court of Appeals: U.S. Solicitor General, Room 5614 Department of Justice, 950 Pennsylvania Avenue N.W. Washington D.C. 20530. 202-514-2203.

Representing Respondent Granite Broadcasting: Akin Gump Strauss Hauer Feld,

Mr. Ira Dizengoff,esq. One Bryant Park New York, NY 10036. 212-872-1000.

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

PARTIES TO THE PROCEEDING.....ii

TABLE OF AUTHORITIES ix

TABLE OF APPENDIX xix

CITATIONS OF PUBLISHED AND UNPUBLISHED OPINIONS AND ORDERS.....xxii

STATEMENT OF BASIS FOR JURISDICTION.....1

CONSTITUTIONAL PROVISIONS, STATUES.....4

STATEMENT OF THE CASE.....7

ARGUMENT

I. THE WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE IT IS JUST AS IN 28

USC SECTION 2106 AND A LEGAL ISSSUE NOT DECIDED BY THIS SUPREME COURT NEEDS TO BE ADDRESSED.....13

II. SINCE 1892 CONGRESS ALLOWED POOR LITIGANTS EQUAL ACCESS TO ALL FEDERAL COURTS BY WAY OF 28 U.S.C. SECTION 1915.....19

III. THE INDIGENT LITIGANT ALREADY PROCEEDED IN THE DISTRICT COURT AS INFORMA PAUPERIS, THEREFORE, CLAIMS RULED MERITIOUS IN FACT AND/OR LAW, 28 U.S.C. 1915.....20

IV. THE COURT OF APPEALS FOR THE SECOND CIRCUIT OPENLY VIOLATED TITLE 28 SECTION 453 IN THE JUSTICE' S OATH AS CARETAKER OF THE UNITED STATES CONSTITUTION, NOT IN RESPECT OF PERSONS, RICH OR POOR.....23

V. THIS UNITED STATES SUPREME COURT FROWNS ON DISCRIMINATION AGAINST

THE POOR
LITIGANT.....35

VI. SUA PONTE DISMISSAL OF A BANKRUPTCY APPEAL VIOLATES THE MANDATED PLENARY REVIEW OF DISTRICT COURT'S INTERPRETATION OF APPLICABLE
LAW.....38

VII. ACCORDING TO THE MANDATE IN FEDERAL RULES OF CIVIL PROCEDURE RULE 8 AND SECOND CIRCUIT'S LOCAL CIRCUIT RULE 27, I, PETITIONER, HAD STATED A CAUSE OF ACTION ENTITLING RELIEF.....46

VIII. UNIFORMITY IN DECISIONS.....56

IX. JUDICIAL ADMISSION BY CORPORATE RESPONDENT, GRANITE BROADCASTING, CONTRADICTS DISTRICT COURT CASE
LAW.....57

X. PETITIONER'S CLAIMS, CAUSES OF ACTIONS, ISSUES ON APPEAL, AND

CORPORATE RESPONDENT JUDICIAL ADMISSION ENTITLES RELIEF, SUA PONTE DISMISSAL NOT WARRANTED.....61

XI. SUA PONTE DISMISSAL UNDER INFORMA PAUPERIS STATUE WAS LEGALLY INAPPROPRIATE UNDER THE CIRCUMSTANCES.....64

XII. EVEN THE CITED UNITED STATES SUPREME COURT CASE LAW IN SUA PONTE DISMISSAL UNDER INFORMA PAUPERIS STATUE FAVORS PETITIONERS ARGUMENT.....71

XIII. THE COURT OF APPEALS FOR THE SECOND CIRCUIT ISSUANCE OF MANDATE WAS PREMATURE, ACCORDING TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 41.....75

XIV. THE COURT OF APPEALS FOR THE SECOND CIRCUIT HAS PROVIDED NO LEGAL REASON WHY I AM BEING DENIED ACCESS TO THE COURTS.....80

CONCLUSION..... ..83

TABLE OF AUTHORITIES

Action Mfg. V. Fairhaven Textile (1st Cir. 1986) 790 F. 2d 164.....60

Ad-Hoc Committee of Baruch Black and Hispanic Alumni Asso. v. Bernard Baruch College (2nd Cir. 1987) 835 F. 2d 980.....62

Arecibo Cmty. Health Care, Inc. v. Puerto Rico (1st Cir. 2001) 270 F. 3d 17.....44

Anders v. California (1966) 386 U.S. 738.....36

Barnes v. Santacroce (2nd Cir. 1987) 815 F. 2d 888.....83

Begier v. IRS (1989) 496 U.S. 53.....68

Bell v. Hood (1945) 327 U.S. 67.....51

Bell v. Wolfish (1979) 441 U.S. 520.....17

Bennett v. Goord. (2d. Cir. 2003) 343 F. 3d 133.....55

Boag v. MacDougall (1981) 454 U.S.364.....82

Bounds v. Smith (1977) 430 U.S. 817.....15

Bramlett v. Wilson (8th Cir. 1974) 495 F. 2d 714.....62

Brown v. Pennsylvania State Employees Credit Union (3rd Cir. 1988) 851 F. 2d 42

Brown v. Tennessee Gas Pipeline (6th Cir. 1980) 623 F. 2nd 450.....60

Bromwell v. Krom (2nd Cir. 2006) 446 F. 3d 305.....55

Canadian Transport Co. v. Irving Trust Co. (2nd Cir. 1977) 548 F. 2d 53.....83

Chambers v. Baltimore & Ohio Railroad Co. (1907) 207 U.S. 142..... 28

Chambers v. Florida (1939) 309 U.S. 227.....20

Cianchette v. Bank of New England (D.C. Maine 1991) 123 B.R. 675.....60

Coppedge v. United States (1962) 369 U.S. 438.....20

Cooper v. Carl A. Nelson & Co. (7th Cir. 2000) 211 F. 3d 1008.....60

Crisafi v. Holland (D.C. Cir. 1981) 655 F. 2d 1305.....65

Cruz v. Gomez (2nd Cir. 2000) 202 F. 3d 593 55

Damiano v. FDIC (11th Cir. 1997) 104 F. 3d 328.....44

Denton v. Hernandez (1992) 504 U.S.25.....68

Dioguardi v. Durning (2nd Cir. 1944) 139 F. 2d 74.....34

Douglas v. California (1962) 372 U.S. 353.....36

FDIC v. Providence Coll. (2nd Cir. 1997) 115 F. 3d 136.....43

Fidelity & Guaranty Fire Corporation v. Bilquist (1938 9th Cir.) 99 F. 2d 333.....34

Francis O'Day Co. v. Shapiro (CADC 1959) 267 F. 2d 669.....52

Fries v. Barnes (2nd Cir. 1980) 618 F. 2d 988...67

Gardner v. California (1969) 393 U.S. 367.....15

Graham v. Henderson (2nd Cir. 1996) 89 F. 3d 75.....55

Guti v. U.S. INS (9th Cir.) 908 F. 2d 495.....74

Haynes v. U.S. (1967) 390 U.S. 85.....16

In re American Freight System Inc. (D. Kan. 1993) 153 B.R. 316.....13

In re AOV Industries, Inc. (D.C. Cir. 1986) 792 F. 2d.....70

In re Best Products Co. (2nd Cir.1995) 68 F. 3d 26.....41

In re Dairy Mart Convenience Stores (2nd Cir. 2005) 411 F. 3d 367.....41

In re Doty (Bankr. N.D. Ind. 1991) 129 B.R. 571.....63

In re Granite Broadcasting (2008) 385 B.R. 41 7

In re Mazzeo (2nd Cir.1999) 167 F. 3d 139.....42

In re Smith (2nd Cir. 2007) 507 F. 3d 64.....41

In re Vebeliunas (2nd Cir. 2003) 332 F. 3d 85 42

In re Woodson Co. (9th Cir. 1987) 813 F. 2d 266 42

Jackson v. Dallas Police Dept. (5th Cir. 1986) 811 F. 2d 260 65

Jenkins v. McKeithen (1969) 395 U.S. 411.....61

Jorgensen v. Epic/Sony Records (2d Cir. 2003) 351 F. 3d 46.....55

K-2Ski Company v. Head Ski Co. (9th Cir. 1974) 506 F.2d 471.....67

Kelley v. Everglades Drainage District (1943) 319 U.S. 415.....82

Klapprott v. United States (1949) 335 U.S. 601 85

Labram v. Havel (4th Cir. 1995) 43 F. 3d 918

.....62

Livingston v. Adirondack beverage Co. (2nd Cir. 1998) 141 F. 3d 434 39

Marbury v. Madison (1803) 2 L ed. 60, 74

.....25

Martinez v. Bally's (5th Cir. 2001) 244 F. 3d 474

.....60

Mayo v. Lakeland highlands Canning Co. (1940) 309 U.S. 31.....82

McCulloch v. Maryland (1819) 17 U.S. 316.....25

McGann v. U.S. (1960) 362 U.S. 309.....22

McPherson v. Coombe (2nd Cir. 1999) 174 F. 3d 276.....55

Mellon Bank v. Metro Communications, Inc. (3rd. Cir. Pa. 1991) 945 F. 2d 635.....44

Michaels v. Post (1874) 88 U.S 398.....57

Munz v. Parr (8th Cir. 1985) 758 F. 2d 1254 67

Nance v. Kelly (2nd Cir. 1990) 912 F. 2d 605 53

Nasso v. Seagal (E.D.N.Y. 2003) 263 F. Supp. 2d 596.....52

Neitzke v. Williams (1989) 490 *Williams*.....10

Nuelsen v. Sorensen (9th Cir. 1961) 293 F. 2d 454.....67

Peoples Natural Gas Co. Federal Power Commission (App. D.C. 1942) 127 F. 2d 153 52

Penson v. Ohio (1988) 488 U.S. 75, 84.....15

Pullman-Standard v. Swint (1982) 456 U.S. 27.....43

Purgess v. Shamrock (2nd Cir. 1994) 33 F. 3d 134.....42

Ruotolo v. IRS (2nd Cir. 1994) 28 F. 3d 6.....55

Salve Regina College v. Russell (1991) 499 U.S. 225.....37

Soo Line R.R. v. St. Louis S.W. Ky (7th Cir. 1997) 125 F. 3d 481.....60

Starks v. Perloff Bros. (3rd Cir. 1985) 750 F. 2d 52.....51

Taylor v. Gibson (5th Cir. 1976) 529 F. 2d 709.....64

Thomas v. Arn (1985) 474 U.S. 140.....29

Thompson v. U.S. (8th Cir. 1972) 493 F. 2d 480 22

Traguth v. Zuck (2nd Cir. 1983) 710 F. 2nd 90 55

Triestman v. Federal Bureau of Prison (2nd Cir. 2006) 470 F. 3d 471.....55

Trulock v. Freeh (2nd Cir. 2001) 275 F. 3d 391 62

U.S. v. Nolder (5th Cir. 1984) 749 F. 2d 1128 85

United States v. Ohio Power Co. (1957) 353 U.S. 98.....56

Universal Minerals, Inc. v. C.A. Hughes & Co. (3rd Cir. 1981) 669 F. 2d 98.....42

U.S. v Jannotti (3rd Cir. 1982) 673 F. 2d 578

.....29

Weixel v. New York City Bd. Of Educ. (2nd Cir. 2002) 287 F. 3d
138.....55

Wright v. Comm'r. (2nd Cir. 2004) 381 F. 3d 41

.....55

MISCELLANEOUS

Author, U.S Supreme Court Justice William O' Douglass in "We The Judges" p. 445 (1956) Doubleday.....31

Black's Law Dictionary, Eighth Edition (2004)

.....39

Webster's *New World Dictionary, third College Edition,* (1988)

.....58

TABLE OF APPENDIX

U.S COURT OF APPEALS FOR THE SECOND CIRCUIT

ORDER DENYING APPOINTMENT OF PRO BONO COUNSEL AND SUA PONTE DISMISSING APPEAL WITH DATE OF ENTRY.....APP 1

ORDER GRANTING EXTENSION OF TIME TO FILE NECESSARY LEGAL PAPERS WITH DATE OF ENTRY.....APP 4

ORDER DENYING RELIEF FROM SUA PONTE DISMISSAL WITH DATE OF ENTRY.....APP 7

MANDATE WITH DATE OF ENTRY.....APP 9

ORDER DENYING EXTENSION OF TIME TO FILE PETITION FOR REHEARING EN BANC WITHDATE OF ENTRY.....APP 12

ORDER AFTER LETTER TO THREE JUDGE

PANEL WITH DATE OF
ENTRY.....APP 14

ORDER DENYING NUNC PRO TUNC
ISSUANT OF PREMATURE MANDATE WITH
DATE OF
ENTRY.....APP 17

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

DISTRICT COURT OPINION
(PUBLISHED).....APP 19

ENTRY OF JUDGMENT.....APP 56

U.S. BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BANKRUPTCY ORDER ESTIMATING
PERSONAL INJURY CLAIM FOR PURPOSES
OF DISTRIBUTION WITH DATE OF
ENTRY.....APP 58

THE LAW ORDAINED TO BE FOLLOWED

CONSTITUTIONAL PROVISIONS, FEDERAL STATUES, AND RULES OF COURT.....APP 62

OTHER ESSENTIAL MATERIAL

EXCERPT FROM CORPORATE RESPONDENTS REORGANIZED CHAPTER 11 PLAN.....APP 76

U.S.COURT OF APPEALS FOR THE SECOND CIRCUIT PUBLIC DOCKET.....APP 80

CITATIONS OF PUBLISHED AND UNPUBLISHED OPINIONS AND ORDERS

United States District Court for the Southern District of New York:

- **Published**-In re: Granite Broadcasting Corporation, et al, Reorganized Debtors. June Foster, Appellant,-against-Granite Broadcasting Corporation, et al., Appellees, *385 B.R. 41*;2008 U.S. Dist LEXI 30619, Decided and Filed April 3, 2008

United States Court of Appeals for the Second Circuit:

- **Unpublished**-Denial of Petitioner's Motion

for Appointment of Pro Bono Counsel, Case No. 08-2717-bk, In re Granite Broadcasting

- ☐ **Unpublished**-Denial of Petitioner's Motion for Reversal, Vacation, or Setting Aside of Sua Ponte Dismissal, Case No. 08-2717-bk, In re Granite Broadcasting

- ☐ **Unpublished**-Denial of Petitioner's Motion Nunc Pro Tunc to Correct Premature Issuance of Mandate, Case No. 08-2717-bk, In re Granite Broadcasting

STATEMENT OF BASIS FOR JURISDICTION

This is a Petition of a Writ of Certiorari for review of a U.S. Court of Appeals, Second Circuit, sua ponte dismissal of petitioner's, appeal involving bankruptcy Title 11 law. Effective foreclosed access to all federal court was put upon me, the petitioner, informa pauperis, and pro se creditor. On November 18, 2008, the Court of Appeals entered an order denying motion of relief from a sua ponte dismissal. Subsequently, the lower court entered an order on December 15, 2008, denying motion to recall and correct nunc pro tunc a premature issue of mandate.

Pursuant to 28 U.S.C. sections 1254(1),

2075, 2101(c), 2106, this United States Supreme Court has jurisdiction for my Petition of a Writ of Certiorari.

28 U.S.C. section 1254(1), Courts of appeals; certiorari; certified questions- Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;...

28 U.S.C. section 2075, Courts of appeals; certiorari; certified questions-The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive Right. The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it

is transmitted to Congress unless otherwise provided by law.

28 U.S.C. section 2101 (c), Supreme Court; time for appeal or certiorari; docketing; stay - Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

28 U.S.C. section 2106, Determination- The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

CONSTITUTIONAL PROVISIONS, STATUES

All pertinent text to the U.S. Constitution and federal statues, and Rules of Court, not set out in the body of the text, is verbatim in the Appendix. (hereinafter "App" and page number)

Preamble to the United States Constitution

United States Constitution: Article I section 8. cl. 4

U.S. Constitution: Article I section 8, cl. 18

United States Constitution: Article IV, section 2, cl. 1

United States Constitution: 14th Amendment

28 U.S.C. section 52(a)

28 U.S.C. section 157 et al Public Law 98-353, Sec. 104

28 U.S.C. section 157 (b)(1)

28 U.S.C. section 157 (b)(2)(B)

28 U.S.C. section 157 (b)(2)(O)

28 U.S.C. section 157(b)(5)

28 U.S.C. 157 (c)(1):

28 U.S.C. section 453

28 U.S.C. section 2072(b)

11 section 502(a): Public Law 98-35

11 section 1123(a)(4): Public Law 98-353

11 U.S.C. section 1129 (b)(1):

11 U.S.C. section 1129(a)(7)(A):

11 U.S.C. section 1129 (b)(1)

28 U.S.C. section 1291

28 U.S.C. section 1334

28 U.S.C. section 1915

28 U.S.C. section 2106

Federal Rules of Civil Procedure Rule 1, 8(a), (e)

Federal Rules of Appellate Procedure, Rules 3, 4, 6, 24 (a)(3), 25 (c)(4), 26 (b) , 35, 40, 41

Federal Rules of Bankruptcy Procedure, Rule 9033(d)

U.S.Court of Appeals, Second Circuit Rule 27

Rules of the Supreme Court of the United States, Rule 10 (a),(c)

STATEMENT OF THE CASE

This is an appeal involving the constitutional rights of an informa pauperis litigant entitled to due process in the federal courts. This writ was born from a sua ponte dismissal of my informa pauperis bankruptcy appeal by the Court of Appeals, Second Circuit, after I requested the assistance of a pro bono counsel to assist with complex Title 11 appeal issues. (App: 1) I, petitioner, am a creditor who lives in California. Corporate Respondent is the debtor, a wealthy New York based corporation and Delaware incorporated entity. The other Respondent is the United States Court of

Appeals for the Second Circuit. The heart of my bankruptcy personal injury claim centers on the illegal termination of my employment due to discriminatory retaliation committed by corporate Respondent. Said litigation began in 2001 and continues. During litigation corporate Respondent proceeded to Bankruptcy Court and gained Chapter 11 protection.

As for the matter before this Court, first, the United States Bankruptcy Court for the Southern District of New York granted my request to proceed informa pauperis status, 28 U.S.C. section 1915, in order to appeal Bankruptcy Court orders to the United States District Court for Southern District of New

York. As such, I proceeded on appeal to the District Court informa pauperis status. The District Court opinion, *385 B.R. 41*, stated that my claim was personal injury, and bankruptcy judges have the authority to estimate personal injury claims. (App:43) It also ruled payment of my claim 'would knock the props out the reorganized respondents.' (App: 53-54) After affirming the Bankruptcy Court orders, my informa pauperis status remained intact from the District Court. Next, I proceeded in the Court of Appeals as informa pauperis, as well. I, petitioner, moved for an order to grant appointment of counsel because of the complexity of the bankruptcy issues. Corporate Respondent filed an objection and included a

judicial admission that Bankruptcy Courts do not have jurisdiction to estimate personal injury claims for the purposes of distribution. The Court of Appeals sua ponte denied my motion for appointment of pro bono counsel and sua ponte dismissed my bankruptcy appeal, stating said appeal has no argument in law or fact, citing this Court's *Neitzke v. Williams* (1989) 490 U.S. 319. (App: 1-3). I, petitioner, then moved for an extension of time to file, pursuant to Federal Rules of Appellate Procedure, Rule 26(b) to file necessary legal papers. It was granted. (App: 4-6) Shortly thereafter, I moved for an order for reversal, vacation, or setting aside of order of sua ponte dismissal under 28 USC 1915(e), 28 USC section 2106 Federal

Rules of Appellate Procedure, Rule 27, Pursuant *Giano v. Coord* (2ND CIR. 2001) 255 F. 3d. 40. The Court of Appeals denied relief from sua ponte dismissal without any legal reason. (App: 7-8) According to the Public Docket, unbeknownst to me, the Court of Appeals also barred any further legal remedy. The Public Docket indicates after the Court of Appeals denied relief from sua ponte dismissal, it apparently ordered "NO FURTHER EXTENSIONS." (App:88) I, petitioner, was not aware of this non-access to the Court of Appeals. Therefore, I, petitioner, moved for an extension of time to file a Petition for Rehearing En Banc. The Court of Appeals denied an extension of time, stating that said motion was moot, since a

mandate was issued. (App: 12-13) The mandate was issued on the same day I, petitioner, filed my motion for extension of time. (App: 9-11) Shortly, I, petitioner, moved for nunc pro tunc order to correct premature issue of mandate. It too, was denied, without any legal reason. (App: 17-18)

The Court of Appeals has jurisdiction to review all final judgments and orders from the District Courts, pursuant to 28 U.S.C. section 1291:

Final decisions of District Courts: The Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of

the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

A District Court has jurisdiction to hear appeals from the Bankruptcy Court, pursuant to 28 U.S.C. sections 157 (b)(1), 158 (a)(1), and 1334. Review by the District Court of final orders by the Bankruptcy Court is mandatory. *In re American Freight System Inc.* (D. Kan. 1993) 153 B.R. 316, 318.

ARGUMENT

I. THE WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE IT IS JUST AS IN 28 USC SECTION 2106 AND A LEGAL ISSSUE NOT DECIDED BY THIS SUPREME COURT

NEEDS TO BE ADDRESSED.

I strongly assert to undo the grave injustice upon my persons, it would be just to reverse a sua ponte dismissal of an informa pauperis appeal and enter an order that's fair and equitable. My appeal in the Court of Appeals involves Title 11 bankruptcy issues that resulted in case law by the District Court, *385 B.R. 41.* (App: 19-55) Certainly, I should have been given a chance to resolve issues on important federal questions. Just like a paying litigant, I, petitioner was entitled to adversary proceedings on my informa pauperis appeal of bankruptcy issues. "...our adversarial system of justice. This system is premised on well-tested principle that truth-as well as fairness-is best

discovered by powerful statements on both sides of the question," *Penson v. Ohio* (1988) 488 U.S. 75, 84; "Even the most dedicated trial judges are bound to overlook meritious cases without the benefit of an adversary presentation." *Bounds v. Smith* (1977) 430 U.S. 817, 826, see also *Gardner v. California* (1969) 393 U.S. 367, 369.

My substantial rights have been affected by the Court of Appeals order to dismiss my appeal outright, pure effective foreclosed access to judicial procedure, without giving me the chance to file a brief and argue the merits of my appeal, and that's constitutionally very unfair to me, a poor, pro se litigant. It is crystal clear that I have been denied full and fair litigation to the

federal appellate system because of my poverty and my inability to afford an attorney. Hence, one of the reasons for requesting appointment of pro bono counsel from the appellate court.

28 U.S.C. section 2106: The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

> " We have plenary authority under 28 U.S.C. 2106 to make such disposition of the case as may be just under the circumstances." *Haynes v. U.S.* (1967) 390 U.S. 85, 101. "In the exercise of our power under 28 USC 2106 to direct the

> entry of such appropriate judgment...'as may be just under the circumstances,' we have conceived it to be our duty to scrutinize this...record with care." id.

According to research, this Supreme Court has not addressed whether a sua ponte dismissal of a bankruptcy appeal is constitutional when an informa pauperis litigant's case has already been ruled meritious under 28 U.S.C. section 1915. Squarely raising a legal issue not previously resolved by the U.S. Supreme Court, *Bell v. Wolfish* (1979) 441 U.S. 520. Therefore, Rules of the Supreme Court of the United States, Rule 10 (a) and (c) are applicable.

Rule 10: Review on a writ of certiorari is not a

matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

For the reasons stated therein, the writ of certiorari should be granted.

II. SINCE 1892 CONGRESS ALLOWED POOR LITIGANTS EQUAL ACCESS TO ALL FEDERAL COURTS BY WAY OF 28 U.S.C. SECTION 1915

Shortly after Reconstruction, in 1892, the United States Congress granted indigents equal access to all federal courts. 27 STAT 252, United States Statues At Large, vol. 27, 52nd Congress 1891-93 Chap. 209, p. 252, July 20, 1892. Equal access to federal courts manifested in 28 U.S.C. section 1915 (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or

security therefor...(2007). "...to assure equality of consideration for all litigants," *Coppedge v. United States* (1962) 369 U.S. 438,447; "All people must stand on an equality before the bar of justice in every American court." *Chambers v. Florida* (1939) 309 U.S. 227, 241.

III. THE INDIGENT LITIGANT ALREADY PROCEEDED IN THE DISTRICT COURT AS INFORMA PAUPERIS, THEREFORE, CLAIMS RULED MERITIOUS IN FACT AND/OR LAW, 28 U.S.C. 1915.

On appeal to the Court of Appeals, I was already proceeding in informa pauperis status granted to me, petitioner, by the Bankruptcy Court (Southern District of New York, Bankruptcy Court, case no. 06-12984 (ALG) Docket #364, 367). On June 18, 2008, the

United States Southern District Court of New York, sent correspondence to the Court of Appeals, Second Circuit, that I was indeed given informa forma pauperis status. Public Docket from Court of Appeals, 6/18/08, Copy of district court ordering granting ifp filed. APPELLANT June Foster [Entry date Jun 23 2008] Therefore, I did not need to re-apply for said status, pursuant to Federal Rules of Appellate Procedure, Rules 24 (a)(3) Prior Approval:

A party who was permitted to proceed informa pauperis in the district-court action...may proceed on appeal in forma pauperis without <u>further</u> authorization. Unless there is certification of bad faith or frivolity by district court.

Therefore, it was no need for me to re-

apply for informa pauperis status to the Court of Appeals again. I was only asking for a pro bono counsel to assist in a complicated bankruptcy appeal. *McGann v. U.S.* (1960) 362 U.S. 309[A judgment of the Court of Appeals will be vacated and case remanded to that court because the petitioner had been granted leave to proceed by the district court, the application to the Court of Appeals was unnecessary]; *Thompson v. U.S.* (8th Cir. 1972) 493 F. 2d 480 [Indigent who had been granted informa pauperis status in lower court need not make second request, but may proceed to court of appeals automatically].

As such, it was already determined by a lower court that I, petitioner, had presented an

arguable meritious claim of fact or law. Proof of non-frivolousness. That means it was totally unfair that I was subjected to TWO tests to determine informa pauperis status. Nothing in 28 U.S.C. section 1915 says that is permitted, instead Federal Rules of Appellate Procedure, Rules 24(a)(3) states once said status is granted, a litigant may proceed on appeal in forma pauperis without further authorization.

IV. THE COURT OF APPEALS FOR THE SECOND CIRCUIT OPENLY VIOLATED TITLE 28 SECTION 453 IN THE JUSTICE' S OATH AS CARETAKER OF THE UNITED STATES CONSTITUTION, NOT IN RESPECT OF PERSONS, RICH OR POOR.

According to the Preamble to U.S. Constitution, the Law is ordained to be followed,

which includes the United States Constitution and all its Amendments, Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure and other applicable Congressionally-approved law.

PREAMBLE TO THE UNITED STATES CONSTITUTION: WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure The Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

"The government proceeds directly from the people; is ordained and established; in the name of the people; and is declared to be ordained; in order to form a more perfect union, establish justice, insure domestic tranquility, and secure

the blessings of liberty to themselves and to their posterity." *McCulloch v. Maryland* (1819) 17 U.S. 316, 403.

I emphatically assert such rule of law needs constant reinforcement to make good and sure that it is available to all citizens, rich or poor, respected or despised, in this country. The only way the rule of law will stand tall is when judicial officers cling to its sworn oath of impartiality, *28 U.S.C. 453.* Otherwise, a cornerstone of this great democratic government will go for naught.

This Supreme Court emphasizes judges' oath and the duty to uphold the Constitution. *Marbury v. Madison* (1803) 2 L ed. 60, 74.

28 U.S.C. Section 453. Oaths of justices and judges: Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ XXX, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God."

Under the color of law, the Court of Appeals sua ponte dismissed my bankruptcy appeal denying my rights under the Rules of Court, pursuant to Federal Rules of Appellate Procedure, Rules 3, 4, and 6.

Rule 3. Appeal as of Right—How Taken(a) Filing the Notice of Appeal.(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within

the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

Rule 4. Appeal as of Right—When Taken (a) Appeal in a Civil Case.(1) Time for Filing a Notice of Appeal. (A) In a civil case, except as provided in Rules 4(a)(1)(B),4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

Rule 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel (a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C.§ 1334 is taken as any other civil appeal under these rules. (b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case. (1)Applicability of Other Rules. These rules

apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b).

> "The right to sue and defend in the courts is the right conservative of all other rights and lies at the foundation of orderly government. It is the one of the highest and most essential privileges of citizenship." *Chambers v. Baltimore & Ohio Railroad Co.* (1907) 207 U.S. 142, 148; "Even a sensible and efficient use of the supervisory power, however, is invalid if it conflicts with constitutional or statutory provisions. A contrary result 'would confer on the judiciary

discretionary power to disregard the considered limitations of the law it is charged with enforcing," *Thomas v. Arn* (1985) 474 U.S. 140, 148.

A denial of these substantial rights is an egregious betrayal of the highest mandates in our judicial system found in the United States Constitution, Civil Procedure, Public Laws, and Congressionally enacted statues. "There is no crueler tyranny than that which is exercised under cover of the law, and with the colors of justice." *U.S. v Jannotti* (3rd Cir. 1982) 673 F. 2d 578, 614-615, dissenting opinion.

As a citizen I have a right to the privileges found in the 14th Amendment of the United States Constitution: "All persons born or

naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law...nor deny to any person within its jurisdiction the equal protection of the laws."

As a citizen I have a right to the privileges found in Article IV, section 2, cl. 1 of the United States Constitution: "The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

As a citizen I have the right to the privileges found in Article I section 8, cl. 4 of the United States. Constitution:" To establish an Uniform Rule of Naturalization, and uniform laws on the subject of Bankruptcies throughout the United States."

As a citizen I have the right to the privileges found in Article I section 8, cl. 18 of the United States Constitution-Powers of Congress: "To make all laws which shall be necessary and

proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department of Officer thereof."

I came to the Court of Appeals, Second Circuit, for help. As a member of the public, a layperson, I look to courts for integrity and fairness. Therefore, I had expected appellate courts to correct lower court errors. I expected appellate courts to resolve disputes in a legally correct manner. "And where basic fundamental rights of the citizen are at stake, the contemplative pause, necessitated by judicial review, may be critical...It assures that basic unfairness will be corrected." *Author, U.S Supreme Court Justice William O' Douglass in We The Judges" p. 445 (1956) Doubleday.*

I had expected a judge's oath, pursuant to *28 U.S.C. 453,* and judicial canons to be taken seriously and *not* turned a blind eye when it came to dealing with my case.

Judge's Ethics as found in the Code of Conduct for United States Judges:

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and

impartiality of the judiciary.

Canon 3. A Judge Should Perform The Duties of the Office Impartiality and Diligently. The judicial duties of a judge take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards: A.) Adjudicative Responsibilities: (5) A judge should dispose promptly of the business of the court. Taken from the commentary on Canon 3A5; In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard...business of the court. Taken from the commentary on Canon 3A5; In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard...

It is not fair to deny my day in appeals court[1] so that I can undo the extreme injustice

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[1] "We do not see how the plaintiff may

properly be deprived of his day in Court to show what he obviously so firmly believes. " *Dioguardi v. Durning* (2nd Cir. 1944) 139 F. 2d 774, 775; see also, [Court reversed judgment to prevent prejudice to appellant.] *Fidelity & Guaranty Fire Corporation v. Bilquist* (1938 9th Cir.) 99 F. 2d 333,335.

committed against my persons in the lower courts. A dismissal, because I asked for a pro bono attorney, is hardly a reasonable person's standard of fair and just adjudication.

V. THIS UNITED STATES SUPREME COURT FROWNS ON DISCRIMINATION AGAINST THE POOR LITIGANT.

The U.S. Supreme Court frowns on discriminating against the poor litigant seeking to uphold its rights in courts of law:

> "...this Court has *consistently held invalid* those procedures 'where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the

indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself," *Anders v. California* (1966) 386 U.S. 738, 741;

"The present case, where counsel was denied petitioners on appeal, shows that discrimination is not between 'possibly good and obviously bad cases,' but between cases where the rich man can require the court to listen to argument of counsel before deciding on the merits, but a poor man cannot. There is lacking that equality demanded by the Fourteenth Amendment." *Douglas v. California* (1962)

372 U.S. 353,357, 358.

"...in order to respect the congressional goal of assuring equality of consideration for all litigants, ...the section 1915(d) frivolous determination frequently made sua ponte...can not serve as a fact-finding process for the resolution of disputed facts." *Salve Regina College v. Russell* (1991) 499 U.S. 225, 332.

"But, if the practice of the Court of Appeals is to defer rulings on motions to dismiss paid appeals until the court has had the benefit of hearing argument and considering briefs and an adequate record, we hold it must no less accord the

poor person the same procedural rights," *Coppedge v. United States* (1962) 369 U.S. 438

Denying me, an indigent, access to an appeal because of my poverty conflicts with relevant decisions of this Court. Rules of the Supreme Court of the United States, Rule 10(c).

VI. SUA PONTE DISMISSAL OF A BANKRUPTCY APPEAL VIOLATES THE MANDATED PLENARY REVIEW OF DISTRICT COURT'S INTERPRETATION OF APPLICABLE LAW.

My appeal comes from the District Court, acting as an appellate court, interpreting and applying bankruptcy law. I was severely injured by the rulings of the Bankruptcy Court that are primarily in the best interest of

corporate Respondent, Granite Broadcasting Corporation's, reorganization Chapter 11 Plan. But, not in the best interest of me, a creditor. At no time was Congressional law or Judicial Oaths applied to the treatment of my bankruptcy claim, which involves personal injury tort law. Instead, I received discriminatory treatment under bankruptcy law. Pursuant to 28 U.S.C. section 157 (b)(1), 158 (a)(1), and 1334, District Courts are mandated to hear bankruptcy appeals, acting as an appellate court. Therefore, by mandate of law, I am entitled to a Plenary[2]/de novo by this

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[2] According to Black's Law Dictionary, Eighth Edition, (2004) page 1193 the

word "Plenary" means: Plenary- 1. Full, complete, entire. 2. (Of an assembly) intended to have the attendance of all members or participants. The phrase "Plenary Action" is defined on page 33 in Black's Law Dictionary: Plenary Action-A full hearing or trial on the merits, as opposed to a summary proceeding.

Court, and nothing less. The Court of Appeals, Second Circuit, as well other circuits, agrees with my contention.

> "When a district acts as an appellate court in an appeal from an order of the bankruptcy court its determination is subject to plenary review. *In* re *Dairy Mart Convenience Stores* (2nd Cir. 2005) 411 F. 3d 367, 371; see also *In re Smith* (2nd Cir. 2007) 507 F. 3d 64, 71. Although the district court acted in its capacity as an appellate court in a bankruptcy case, we must review the bankruptcy court's findings of fact and conclusions of law independently"; *In re Best Products Co.*

(2nd Cir.1995) 68 F. 3d 26; *In re Mazzeo* (2nd Cir.1999) 167 F. 3d 139; *Brown v. Pennsylvania State Employees Credit Union* (3rd Cir. 1988) 851 F. 2d 81; *In re Woodson Co.* (9th Cir. 1987) 813 F. 2d 266; *Universal Minerals, Inc. v. C.A. Hughes & Co.* (3rd Cir. 1981) 669 F. 2d 98.

There is ample case law in the Second Circuit to further support my position that questions of law are subject to plenary/de novo review. *In re Vebeliunas* (2nd Cir. 2003) 332 F. 3d 85, 90; *Purgess v. Shamrock* (2nd Cir. 1994) 33 F. 3d 134, 140-141 [de novo review of judgment as matter of law]; Mixed questions of fact and law are subject to de novo review. *FDIC*

v. Providence Coll. (2nd Cir. 1997) 115 F. 3d 136, 140.

This United States Supreme Court agrees with my contention. A district court's questions of the application, interpretation and construction of the law are reviewed de novo on appeal. *Pullman-Standard v. Swint* (1982) 456 U.S. 273, 287, 289 n. 19 and given plenary review. "The obligation of responsible appellate jurisdiction implies the requisite authority to review independently a lower court determination." *Salve Regina College v. Russell* (1991) 499 U.S. 225, 231, 238 [appellate court owes no deference to the trial court's conclusions].

Other Circuits agree that questions of law are reviewed de novo. *Damiano v. FDIC* (11th Cir. 1997) 104 F. 3d 328, 332 [de novo review of interpretation of statue and dismissal for lack of subject matter jurisdiction]; *Arecibo Cmty. Health Care, Inc. v. Puerto Rico* (1st Cir. 2001) 270 F. 3d 17, 22 [questions of law are always reviewed de novo]; *Mellon Bank v. Metro Communications, Inc.* (3rd. Cir. Pa. 1991) 945 F. 2d 635,642 [Plenary review of the trial court's choice and interpretation of legal precepts].

Under the construction of the Due Process Clause of the 14th Amendment, I am guaranteed the laws are Equally and Constitutionally applied to my case. Therefore, I am entitled to

plenary/de novo review of bankruptcy court matters. Anything else is unconstitutional and unfair. "...avoidance of inequitable administration of the laws, *Hanna v. Plumer*, 380 U.S. 460, 468 (1965) are components of the goal of doctrinal coherence advanced by independent appellate review." *Salve Regina College v. Russell* (1991) 499 U.S. 225, 234.

Denying my right to a mandated plenary review of a bankruptcy appeal departs from the accepted and usual course of judicial proceeding as to call for an exercise of this Court's supervisory power. Such denial is also in conflict with the Second Circuit other decisions, and other Circuit Courts, as well, Rules of the

Supreme Court, Rule 10(a).

VII. ACCORDING TO THE MANDATE IN FEDERAL RULES OF CIVIL PROCEDURE RULE 8 AND SECOND CIRCUIT'S LOCAL CIRCUIT RULE 27, I, PETITIONER, HAD STATED A CAUSE OF ACTION ENTITLING RELIEF.

Federal Rules of Civil Procedure, Rule 8:

(a)Claim For Relief. A pleading that states a claim for Relief must contain:(1)a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2)a short and plain statement of the claim showing that the pleader is entitled to relief; and (3)a demand for relief sought, which may include relief in the alternative or different types of relief.

(e)Construing Pleadings. Pleadings must be construed so as to do justice.

Second Circuit Local Rule 27 Motions: (j) Motions by Pro Se Appellant in Civil Appeals (including Habeas Corpus). In any civil

appeal...a motion filed by a pro se appellant...shall identify each issue that the appellant intends to raise on appeal and shall state, with respect to each issue, facts and a brief statement of reasons showing that the issue has likely merit. When a motion filed by a *pro se* appellant does not comply with this rule, the Clerk shall promptly send the appellant a letter enclosing a copy of this rule and informing the appellant (1) the required identification of issues and supporting facts and reasons must be filed with the court within 21 days...

As such, I had properly stated a cause of action entitling relief, pursuant to the mandate FRCVP Rule 8, in my motion for relief from sua ponte dismissal. I had stated each issue to be presented on appeal with facts and reasons showing likely merit, pursuant to this Circuit's Local Rule 27, in my motion for appointment of counsel, and motion for relief from sua ponte

dismissal. Otherwise, had I not, the Second Circuit would had sent a letter informing me that I must file the necessary supporting facts and reasons. But I received no such letter. Heeding to commonsense, it's crystal clear that I submitted the necessary information, stating with precision, to the best of my ability grounds for relief and causes of action, pursuant to FRCVP Rule 8 and Local Rule 27. I submitted the following appeal issues in my motion for appointment of pro bono counsel and relief from sua ponte dismissal:

1.) Did the bankruptcy court violate a Title 11 Congressional mandate when it estimated my personal injury tort claim claim to zero for

purposes of distribution against the estate of debtors, pursuant to Title 28 U.S.C. section 157 (b)(2)(B), (b)(2)(O) and (b)(5)?

2.) Did the bankruptcy court usurp the function of Congress passing Title 11 section 502(a), when it disallowed my claim, despite debtors not objecting to said claim?

3.) Did the bankruptcy court in its role as an estimator, not as a finder of fact, abuse its discretion when it used the binary approach of all-or-nothing when it estimated my personal injury claim to zero?

4.) Did the bankruptcy court violate Congress passing Title 11 section 1123(a)(4) in a

bankruptcy proceeding of equal protection and treatment when it confirmed a plan, in which I was part of an impaired class and received different treatment from any other member of said class?

5.) Was Granite's Reorganization Plan under Title 11 Confirmable as a Matter of Law, pursuant to 11 U.S.C. sections 1129, 1129(b)(1), 1123(a)(4), 1123 (a)(5)(G), 1129(a)(7)(A)?

6.) Did the bankruptcy judge's actions amount to bias or prejudice, thereby giving him no duty to sit on case, pursuant Congress passing Title 28 section 144 and 455?

7.) Is an appeal of a confirmation order deemed

moot because of alleged substantial consummation, even when the principles of Equitable mootness and Constitutional mootness, are taken together and there exists a remedy?

Therefore, there is no way possible my bankruptcy appeal, in which plenary/de novo review is mandated, contained no basis in fact or law, as the Second Circuit stated in its order dismissing my appeal sua ponte! (App: 1-3) This Supreme Court agrees. "Whether the complaint states a cause of action on which relief could be granted IS a question of law." *Bell v. Hood* (1945) 327 U.S. 678, 681-682; see also *Starks v. Perloff Bros.* (3rd Cir. 1985) 750 F. 2d 52 [Overly

restrictive reading of a complaint is inconsistent with the mandate that pleadings shall be so construed as to do substantial justice]; *Francis O'Day Co. v. Shapiro* (CADC 1959) 267 F. 2d 669; *Peoples Natural Gas Co. Federal Power Commission* (App. D.C. 1942) 127 F. 2d 153.

Therefore, substantial justice mandated under FRCVP Rule 8 has not been done, and that's a violation of the rules of the Federal Rules of Civil Procedure, aimed at justice. Federal Rules of Civil Procedure, Rule 1. "These rules...shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." *Nasso v. Seagal* (E.D.N.Y. 2003) 263 F. Supp. 2d 596, 609-610,

"While the review of prior orders may slow the process of an action, the Federal Rules of Civil Procedure are aimed at securing determinations that are just."

Furthermore, the Second Circuit did not even follow its own precedent in handling dismissals under *28 U.S.C. section 1915.* In *Nance v. Kelly* (2nd Cir. 1990) 912 F. 2d 605, 606, it ruled "...a court should look with a far more forgiving eye in examining whether a complaint rests on a meritless legal theory for purposes of section 1915." Because, "all allegations are construed in the light most favorable to the plaintiff, and doubts are resolved in the plaintiff's favor," *Nasso v. Segal*

(E.D.N.Y 2003) 263 F. Supp. 2d 596, 610, 611.

Totally abandoning the plethora of case law in its own Circuit supporting mandated liberal readings of pleadings and 'special solicitude' for pro se's, a sua ponte dismissal of my appeal, by the Second Circuit, was unjust and unfair. "Reading...pro se complaint broadly, as we must, see Haines v. Kerner, 404 U.S. 519, 520-21...complaint is not frivolous," *Livingston v. Adirondack beverage Co.* (2nd Cir. 1998) 141 F. 3d 434, 437; "It is well established that the submissions of a pro se litigant must be construed liberally and interpreted 'to raise the strongest arguments that they suggest."..."Pro se litigants must be accorded '*special*

solicitude.'" *Triestman v. Federal Bureau of Prison* (2nd Cir. 2006) 470 F. 3d 471, 475 quoting *Ruotolo v. IRS* (2nd Cir. 1994) 28 F. 3d 6, 8, and *Traguth v. Zuck* (2nd Cir. 1983) 710 F. 2nd 90, 95, see also *Bromwell v. Krom* (2nd Cir. 2006) 446 F. 3d 305, 310; *Wright v. Comm'r.* (2nd Cir. 2004) 381 F. 3d 41, 44; *Jorgensen v. Epic/Sony Records* (2d Cir. 2003) 351 F. 3d 46, 50; *Bennett v. Goord.* (2d. Cir. 2003) 343 F. 3d 133, 137; *Weixel v. New York City Bd. Of Educ.* (2nd Cir. 2002) 287 F. 3d 138, 145-46; *Cruz v. Gomez* (2nd Cir. 2000) 202 F. 3d 593, 597; *McPherson v. Coombe* (2nd Cir. 1999) 174 F. 3d 276,280; *Graham v. Henderson* (2nd Cir. 1996) 89 F. 3d 75, 79.

VIII. UNIFORMITY IN DECISIONS.

The above illustration of ample case law made by the Second Circuit Court of Appeals solidifies my argument concerning liberal readings of pleadings and pro se litigants. But I, petitioner, did not receive the same established treatment in the Second Circuit, and that's not fair. This Supreme Court discussed the importance of uniformity of treatment in *United States v. Ohio Power Co.* (1957) 353 U.S. 98, 99. The highest Court sua ponte vacated a previously given order so that the case "might be disposed of consistently with... companion cases...We have consistently ruled that the interest in finality of litigation must yield where

the interests would make unfair the strict application of our rules."

Furthermore, United States Constitution Article I section 8, cl. 4, requires uniform bankruptcy laws, "To establish an Uniform Rule of Naturalization, and uniform laws on the subject of Bankruptcies throughout the United States." See also "Power to establish uniform laws upon the subject of bankruptcy throughout the United States is conferred upon Congress, and Congress having exercised the power it has become an exclusive power." *Michaels v. Post* (1874) 88 U.S. 398.

IX. JUDICIAL ADMISSION BY CORPORATE RESPONDENT, GRANITE BROADCASTING, CONTRADICTS DISTRICT COURT CASE

LAW.

After I filed a motion for appointment of pro bono counsel, corporate Respondent, Granite Broadcasting Corporation, willfully and deliberately submitted an admission.[3] On page 10 in its response to my motion for appointment of pro bono counsel, private Respondents state, "...section 157 (b)(2)(B) of the Judicial Code limits the ability of a Bankruptcy Court to adjudicate the merits of personal injury claims

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[3] According to Webster's *New World Dictionary, third College Edition,* (1988), *page 17,* admission is defined as: "4. A conceding, or granting of the truth, of something."

through estimation..." As such, corporate Respondent have admitted as true and valid that Bankruptcy Courts have limited powers in handling personal injury claims. Therefore, a major portion of the District Court's judgment, which turned into case law, *In re Granite Broadcasting*, 385 B.R. 41 (2008) (App: 19-55) has been overturned by corporate Respondent themselves! A judicial admission is further proof that my appeal has an arguable basis in law and fact.

The following case law supports my argument. Judicial admissions are formal concessions in the pleadings, or stipulation by a party that are binding upon the party making

them, *Soo Line R.R. v. St. Louis S.W. Ky* (7th Cir. 1997) 125 F. 3d 481; A matter once conceded is not later in dispute, *Action Mfg. V. Fairhaven Textile* (1st Cir. 1986) 790 F. 2d 164, 165; Under federal law, stipulations and admissions in the pleadings are generally binding on the parties and the Court. *Brown v. Tennessee Gas Pipeline* (6th Cir. 1980) 623 F. 2d 450, 454; Admissions are binding, *Cianchette v. Bank of New England* (D.C. Maine 1991) 123 B.R. 675; A judicial admission trumps evidence, *Cooper v. Carl A. Nelson & Co.* (7th Cir. 2000) 211 F. 3d 1008, 1014; A judicial admission is conclusive, unless the court allows it to be withdrawn, *Martinez v. Bally's* (5th Cir. 2001) 244 F. 3d 474.

Therefore, according to the case law cited above, because of corporate Respondent binding judicial admission, I am entitled to relief, in the form of a reversal of the Court of Appeals sua ponte dismissal.

X. PETITIONER'S CLAIMS, CAUSES OF ACTIONS, ISSUES ON APPEAL, AND CORPORATE RESPONDENT JUDICIAL ADMISSION ENTITLES RELIEF, SUA PONTE DISMISSAL NOT WARRANTED.

With the judicial light on liberal readings of pleadings, special solicitude for pro se's, and corporate Respondent judicial admission, I am entitled to relief. Therefore, my appeal should not have been dismissed unless I "could prove no sets of facts in support of his claim which would entitle him to relief." *Jenkins v. McKeithen*

(1969) 395 U.S. 411, 422. see also *Ad-Hoc Committee of Baruch Black and Hispanic Alumni Asso. v. Bernard Baruch College* (2nd Cir. 1987) 835 F. 2d 980, *Trulock v. Freeh* (2nd Cir. 2001) 275 F. 3d 391, *Labram v. Havel* (4th Cir. 1995) 43 F. 3d 918, 920.

Dismissal is warranted only if the face of the complaint shows an 'insuperable bar' to relief. *Bramlett v. Wilson* (8th Cir. 1974) 495 F. 2d 714, 716. Without any doubt I can receive relief based on constitutionally applied bankruptcy law. Then, certainly I can prove sets of facts entitling me to relief, therefore, my appeal was not susceptible to a threshold dismissal, pursuant to 28 U.S.C. section 1915.

Further, a relief to resolve my bankruptcy case has already been ordered by the Bankruptcy Court. Such an equitable remedy could be ordered without undoing or unraveling the Chapter 11 bankruptcy confirmation plan that corporate Respondent authored. The Plan is strictly construed against its author. *In re Doty* (Bankr. N.D. Ind. 1991) 129 B.R. 571, 590-592. Fn.3. Said plan has a section that deals specifically with disputed claims, allowing appeals and post confirmation distribution. (App: 76-79) Creditors or other parties will not suffer either because they all have been paid or their claims resolved.

The Plan states: "If, on or after the Effective Date, any Disputed Claim becomes an

Allowed Claim, the Disbursing Agent shall, on the fifteenth Business Day of the first month following the month in which the Claim become an Allowed Claim, make any distribution to the holder of such Allowed Claim in an aggregate amount sufficient to provide such holder with the amount that such holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date or any Subsequent Distribution Date." (SDNY Bankruptcy Court Case No. 06-12984-ALG Document #323, 324) (App: 76-79)

XI. SUA PONTE DISMISSAL UNDER INFORMA PAUPERIS STATUE WAS LEGALLY INAPPROPRIATE UNDER THE CIRCUMSTANCES.

Judges and courts have the responsibility to ensure that pro se pleadings are not dismissed prematurely. *Taylor v. Gibson* (5th Cir. 1976) 529 F. 2d 709, 713. Instead, the Second Circuit failed to protect my pro se appeal

from dismissal. It strongly appears said Court did not fully consider my already granted *informa pauperis* status and applicable law involved in my case. *Crisafi v. Holland* (D.C. Cir. 1981) 655 F. 2d 1305, 1310.

According to case law cited by the Second Circuit and other Circuits, a dismissal on the grounds of frivolousness is not permitted when a plaintiff/appellant raises arguable points, even if he or she is unlikely to succeed on those arguments. "Probable success on merits need not be shown, only that claim involves 'legal points on their merits and therefore not frivolous.'" *Jackson v. Dallas Police Dept.* (5th Cir. 1986) 811 F. 2d 260, 261. Furthermore, my

claims are not examples of frivolous claims as explained in *Nance v. Kelly* (2nd Cir. 1990) 912 F. 2d 605, 606-607, frivolous claims are

> "...claims in which the defendants are clearly immune from suit or claims seeking redress for a non-existent legal interest would be examples of claims which would be considered indisputably meritless and properly dismissed under section 1915. Once an informa pauperis raises a cognizable claim, a...court may not dismiss it *sua ponte under section 1915,* even if the complaint does not flesh out all the requisite details."

Going against its own precedence, the Second Circuit specifically ruled against sua ponte dismissals, "...We have repeatedly cautioned against use of this procedure where the complaint, which must be construed liberally in

favor of the pro se plaintiff, citing Haines v. Kerner 404 U.S. 519, 520, calling once again for restraint in the exercise of this power,[4]" *Fries v. Barnes* (2nd Cir. 1980) 618 F. 2d 988, 989.

According to this United States Supreme

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[4] Sua ponte dismissals are not favored. *Munz v. Parr* (8th Cir. 1985) 758 F. 2d 1254, 1258. The power to raise and decided questions sua ponte is, however, to be exercised sparingly and with full realization of the restrictions and limitations inherent in its employment. *K-2Ski Company v. Head Ski Co.* (9th Cir. 1974) 506 F. 2d 471, 475; *Nuelsen v. Sorensen* (9th Cir. 1961) 293 F. 2d 454, 462.

Court, it was not appropriate to dismiss my appeal. Dismissals are warranted "only if facts are fanciful, fantastic and delusional." *Denton v. Hernandez* (1992) 504 U.S. 25, 32-33. "...a complaint filed informa pauperis...may nonetheless have an arguable basis in law precluding dismissal under section 1915."

The alleged violations I contend under bankruptcy law are by no means fanciful or delusional. It is quite apparent the law of Chapter 11 bankruptcy is founded on principles of equity. All creditors are to be treated fairly. "Equality of distribution among creditors is a central policy of the Bankruptcy Code." *Begier v. IRS* (1989) 496 U.S. 53.

A fundamental requirement of a reorganization plan under Chapter 11 is fairness, because the concept of good faith must be achieved, actualized, and consummated. Fairness is a concept that requires 11 U.S.C. section 1123(a) to be adhered to in regards to negotiating the plan terms, the plan's presentation to creditors, the conduct of voting on the plan, and the treatment of the plan for impair, secured, unsecured, dissenting claims and classes. Therefore, depriving me, an impaired creditor, of these things is against *Title 11* altogether. I was the only creditor in an unsecured class that received nothing, zilch, nada under corporate Respondent reorganization plan.

I strongly assert, pursuant to Acts of Congress, the treatment my claim received under the confirmed plan of an estimated $0 zero for purposes of allowance, distribution and voting was grossly unfair and egregiously discriminatory. (App: 58-61) This treatment is illegal, " unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. section 1123 (a)(4). "...the most conspicuous inequality that section 1123(a)(4) prohibits is payment of different percentage settlements to co-class members." *In re AOV Industries, Inc.* (D.C. Cir. 1986) 792 F. 2d 1140, 1152.

XII. EVEN THE CITED UNITED STATES SUPREME COURT CASE LAW IN SUA PONTE DISMISSAL UNDER INFORMA PAUPERIS STATUE FAVORS PETITIONERS ARGUMENT.

The Court of Appeals for the Second Circuit relies solely on this Court's case in its sua ponte dismissal of my appeal, *Neitzke v. Williams* (1989) 490 U.S. 319. However, such a ruling is in direct conflict with *Neitzke*. From the very beginning, *Neitzke* is different from my circumstances. Respondent Williams in *Neitzke* filed for a motion to proceed informa pauperis, but was denied in the District Court, then applied to the Court of Appeals. That is not I. I was never denied to proceed as a poor person. I

was approved by the Bankruptcy Court to proceed informa pauperis in the District Court, which means the merits of my argument in fact and law have already been determined to be meritious by a lower court. (Southern District of New York Bankruptcy Court, case no. 06-12984 (ALG) Docket #364, 367) Unlike the respondent in *Neitzke*, my appeal is a bankruptcy matter where the district court's judgment is subject to plenary/de novo review.

This Court in *Neitzke* ruled "...frivolousness in the section 1915(d) context refers to a more limited set of claims...with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous," id

at 327, 329 "Examples...are claims describing fantastic or delusional scenarios." id at 328. According to *Neitzke* a dismissal for frivolousness under *section 1915* is incorrect, "...when a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff...dismissal on the basis of frivolousness is not." (appropriate) id at 328

Therefore, I assert, it was legally erroneous to dismiss my appeal on frivolousness, just because I was not successful in the District Court. As a litigant, it is not fair that I had to suffer expanded versions of frivolousness that resulted in a sua ponte

dismissal. "To conflate the standards of frivolousness...would thus deny indigent plaintiffs the practical protections against unwarranted dismissal generally accorded paying plaintiffs under the Federal Rules." id (*Neitzke)* at 330 Since, my appeal does not meet the standards of frivolous, according to *Neitzke*, then, the frivolous standard was not satisfied. As such, "The standard is not met when there is no controlling authority requiring a holding that the facts as alleged fail to establish even an arguable claims as a matter of law," *Guti v. U.S. INS* (9th Cir.) 908 F. 2d 495,496.

XIII. THE COURT OF APPEALS FOR THE SECOND CIRCUIT ISSUANCE OF MANDATE WAS PREMATURE, ACCORDING TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 41.

According to Federal Rules of Appellate Procedure Rules 25(c)(4) Manner of Service, 26(b), 35, 40, and 41, the Second Circuit's mandate is in violation of procedural rules. (App: 9-11) It was not time to issue a mandate. Such mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing or en banc, or motion for stay of mandate pending review by the U.S.

Supreme Court, whichever is later. But procedurally that didn't happen.

Timeline:

- ⇨ September 10, 2008-The Second Circuit dismissed my appeal under *28 U.S.C. section 1915*, served notice by mail. (App: 1-3)

- ⇨ November 6, 2008-I served and filed via overnight USPS mail a Motion for Reversal, Vacation, Setting Aside Sua Ponte dismissal under *28 U.S.C. section 2106*. (I was allowed a 30-day extension of time to file necessary legal papers) (App: 4-6)

- ⇨ November 18, 2008-Second Circuit denied my Motion for Reversal, Vacation, Setting Aside

Sua Ponte Dismissal under *28 U.S.C. section 2106,* for no legal reason. (App: 7-8)

⇨ November 24, 2008-I served a timely Motion for extension of time to file a Petition of Rehearing or Rehearing En Banc, FRAP Rules 25 (c)(4) Manner of Service, 26(b), 35, 40. It was delivered by overnight mail to Second Circuit on November 25, 2008. Proof of Delivery by the USPS overnight mail. (App:89)

⇨ November 25, 2008-Second Circuit issued a mandate without considering my timely motion for extension of time that was served on November 24 and arrived on November 25, 2008. (App: 9-11, 89)

⇨ November 25, 2008-Second Circuit issued a denial of my request for extension of time to file Petition for rehearing on November 25, 2005 at 3:37 p.m. (App: 12-13)

Therefore, it was egregiously unfair for the Second Circuit to issue a mandate, pursuant to FRAP Rule 41. There is nothing in said Court's local rules that dictates a certain number of days when a mandate is to be issued. Therefore, it clear Second Circuit followed the guidelines established in FRAP Rule 41 to issue a mandate in seven days. But, I didn't get the chance to use the other due process procedures outlined in FRAP Rule 41, that's considered unfair to any reasonable person's mind. Furthermore, a

Circuit's local rule cannot trounce on my substantive rights as established under Federal Rules of Civil and Appellate Procedure, pursuant to

28 U.S.C. section 2072(b): Rules of Procedure. Power To Subscribe. Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Further injury to my persons came as a result of receiving no notice that I was banned from filing any other documents in the Court of Appeals, as indicated by the Public Docket, which indicates "NO FURTHER EXTENSIONS." (App:88) Public Docket: 11/18/08- Order FILED. IT IS HEREBY

ORDERED that the motion extended by pro se Appellant for relief from sua ponte dismissal is DENIED. Before GC, BDP, PWH, Circuit Judges. Endorsed by JP, Mtns. Staff Atty dated 11/18/08. Extended Mandate due is 11/25/08. NO FURTHER EXTENSIONS. [Entry date Nov 18 2008] (App:88)

XIV. THE COURT OF APPEALS FOR THE SECOND CIRCUIT HAS PROVIDED NO LEGAL REASON WHY I AM BEING DENIED ACCESS TO THE COURTS.

The Court of Appeals for the Second Circuit provided no legal basis as to why I was being denied the substantive right of an appeal on bankruptcy law. This means I was clearly prejudiced by my status as a pro se and informa

pauperis litigant. In its sua ponte order that dismissed my appeal outright, the Second Circuit cited *28 U.S.C. section 1915(e)* and *Neitzke v. Williams* (1989) 490 U.S. 319. But I disproved said Court's legal reasoning, determining said case law is actually in my favor. Therefore, according to *Neitzke,* the Second Circuit dismissed my appeal upon erroneous legal grounds. Then, I filed a motion for relief from sua ponte dismissal, but that was denied, this time providing no legal grounds, no case law, no statues, no finding of prejudice to corporate respondent, no bad faith by me, petitioner, no addressing any appeal issue presented, no consideration of my extraordinary circumstances, no consideration of interest of

justice. Nothing. Just denied. Some contemporaneous form of legal reasoning was needed, *Boag v. MacDougall* (1981) 454 U.S. 364; "We hold only that there must be findings, stated either in the court's opinion or separately, which are sufficient to indicate the factual basis for the ultimate conclusion." *Kelley v. Everglades Drainage District* (1943) 319 U.S. 415,422; see also, *Mayo v. Lakeland highlands Canning Co.* (1940) 309 U.S. 310, 316.

Furthermore, Federal Rules of Civil Procedure, Rule 52(a) calls for a legal reason in actions tried without a jury. Federal Rules of Civil Procedure, Rule 52(a):...in all tried upon the facts without a jury or with an advisory jury,

the court shall find the facts specially and state separately its conclusions of law thereon...The reviewing court may vacate the order if the findings and the record are not sufficient to enable the court to be sure of the basis of the decision below. *Barnes v. Santacroce* (2nd Cir. 1987) 815 F. 2d 888,889; *Canadian Transport Co. v. Irving Trust Co.* (2nd Cir. 1977) 548 F. 2d 53,55.

CONCLUSION

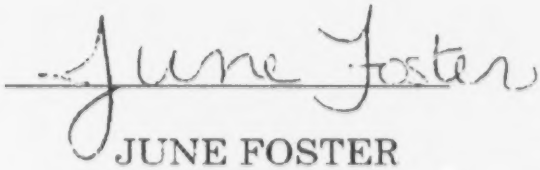
Providing no legal reason for denying relief from a sua ponte dismissal, and not correcting the premature issuance of the mandate is clear violation of my substantive rights. Judicial violence has been committed

against my persons for no good logical legal reason. All of the Second Circuit actions against my appeal predominately were stated with aggression and cruelty judicially directing me to 'buzz off and get lost'. The Second Circuit provided me no rightful access to address my grievances under bankruptcy law. Even though it is mandated under the law that I have a right to appeal bankruptcy orders, it is being denied to me.

I respectfully pray and ask this Court to grant my Petition of a Writ of Certiorari to review the sua ponte dismissal in the interest of justice, so that I can have full and fair access to the federal courts as allowed under 28 U.S.C.

section 1915 and the 14th Amendment United States Constitution. A final judgment may be vacated where such action is appropriate to accomplish justice, *U.S. v. Nolder* (5th Cir. 1984) 749 F. 2d 1128; *Klapprott v. United States* (1949) 335 U.S. 601, 615 [whenever such action is appropriate to accomplish justice].

April 13, 2009 Respectfully Submitted,



JUNE FOSTER
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Other Counsel/Parties served:

Solicitor General of the United States

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United States Court of Appeals for the Second Circuit
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212-857-8500

Corporate Respondents Attorney of Record for Granite Broadcasting
Akin Gump Strauss Hauer Feld
Ira Dizengoff, esq.
One Bryant Park
New York, NY 10036
212-872-1000

APPENDIX

ORDER DENYING APPOINTMENT OF PRO BONO COUNSEL AND SUA PONTE DISMISSING APPEAL

S.D.N.Y. N.Y.C.
07-cv-6217
McMahon,J.

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 10th day of September, two thousand eight,

Present:

Hon. Guido Calabresi,
Hon. Barrington D. Parker,
Hon. Peter W. Hall,

Circuit Judges. **Filed Sep 10, 2008**

Date of Entry September 10, 2008

June Foster,

Creditor-Appellant,

v. 08-2717-bk

Granite Broadcasting Corporation,

Debtor-Appellee,

Appellant, pro se, moves for appointment of counsel. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it lacks and arguable basis in fact or law. See Neitzke v.

Williams, 490 U.S. 319,325 (1989); 28 U.S.C. section 1915(e)

FOR THE COURT:
Catherine O' Hagan Wolfe, Clerk
By:
/s/ Franklin Perez

ORDER GRANTING EXTENSION OF TIME TO FILE NECESSARY LEGAL PAPERS

S.D.N.Y. N.Y.C.
07-cv-6217
McMahon, J.

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of October, two thousand eight,

Present:

Hon. Guido Calabresi,
Hon. Barrington D. Parker,

Hon. Peter W. Hall,

Circuit Judges. **Filed Oct 7, 2008**

Date of Entry October 7, 2008

June Foster,

Creditor-Appellant,

v. **08-2717-bk**

Granite Broadcasting Corporation,

Debtor-Appellee,

Appellant, pro se, moves for an extension of time to filed a petition for rehearing. See Fed R. App. P. 40. Upon due consideration, it is hereby ORDERED that the motion is GRANTED. See Marino v. Ortiz, 888 F. 2d 12, 13 (2d Cir. 1989) (per curiam); Fed R. Ap. P. 26(b). Appellant has

30 days from the date of the is Order to file her petition[1].

FOR THE COURT:
Catherine O' Hagan Wolfe, Clerk
By:
/s/ Richard Alcantara, Deputy Clerk

---

[1] The Court of Appeals did not pay attention to my motion for an extension of time. I did not specifically request to file a Petition for Rehearing. I requested an extension to file necessary legal papers.

ORDER DENYING RELIEF FROM SUA PONTE DISMISSAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square

40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 08-2717-BK

Caption

IN RE GRANITE BROADCASTING

Motion for: MOTION FOR RELIEF FROM SUA PONTE DISMISSAL

Filed Nov 06 2008

ORDER

Before: Hon. Guido Calabresi, Hon. Barrington D. Parker, Hon. Peter W. Hall, Circuit Judges.
Filed Nov 18, 2008 Date of Entry November 18, 2008

IT IS HEREBY ORDERED that the motion by pro se Appellant for relief from sua ponte dismissal is DENIED

FOR THE COURT:
Catherine O' Hagan Wolfe, Clerk
by
/s/Judy Pisnanont, Motions Staff Attorney

MANDATE

S.D.N.Y. N.Y.C.
07-cv-6217
McMahon,J.

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 10th day of October, two thousand eight,

Present:

Hon. Guido Calabresi,
Hon. Barrington D. Parker,
Hon. Peter W. Hall,

Circuit Judges. **Filed Sep 10, 2008**

Date of Entry September 10, 2008

June Foster,

Creditor-Appellant,

v. **08-2717-bk**

Granite Broadcasting Corporation,

Debtor-Appellee,

Appellant, pro se, moves for appointment of counsel. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it lacks and arguable basis in fact or law. See Neitzke v. Williams, 490 U.S. 319,325 (1989); 28 U.S.C. section 1915(e)

FOR THE COURT:
Catherine O' Hagan Wolfe, Clerk
By: /s/ Franklin Perez

ISSUED AS MANDATE: 11/25/08

Date of Entry 11/25/08

A TRUE COPY
Catherine O' Hagan Wolfe, Clerk
By: /s/ Lynette Rodgriguez, Deputy Clerk

ORDER DENYING EXTENSION OF TIME TO FILE PETITION FOR REHEARING EN BANC

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square

40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 08-2717-BK

Caption

IN RE GRANITE BROADCASTING

Motion for: 30-day Extension of time to file Petition of Rehearing or En Banc

Filed Nov 25 2008

ORDER

IT IS HEREBY ORDERED that the motion is DENIED as moot in light of mandate issued on 11/25/08.

Filed Nov 26 2008

Date of Entry November 26, 2008

FOR THE COURT:
Catherine O' Hagan Wolfe, Clerk
by
/s/Judy Pisnanont, Motions Staff Attorney

ORDER AFTER LETTER TO THREE JUDGE PANEL

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 26th day of November, two thousand eight,

Present:

Hon. Guido Calabresi,
Hon. Barrington D. Parker,
Hon. Peter W. Hall,

Circuit Judges. **Filed Nov 26 2008**

Date of Entry November 26, 2008

June Foster,

Creditor-Appellant,

v. **08-2717-bk**

Granite Broadcasting Corporation,

Debtor-Appellee,

The Court has received a letter from Appellant dated November 17, 2008, addressed to a member of the panel. Because the Court has entered its order denying the Appellant's November 6, 2008 motion from relief from sua ponte dismissal without having had the benefit of the Appellant's November 17, 2008 supplemental argument, the Court will treat that letter as a request for reconsideration of its disposition of the November 6 motion, and that request for reconsideration is hereby DENIED.

FOR THE COURT:

Catherine O' Hagan Wolfe, Clerk
By:
/s/ Judy Pisnanont, Motions Staff Attorney

ORDER DENYING NUNC PRO TUNC ISSUANT OF PREMATURE MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square

40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 08-2717-BK

Caption

IN RE GRANITE BROADCASTING

Motion for: MOTION FOR NUNC PRO TUNC ORDER

Filed Dec 02 2008

ORDER

Before: Hon. Guido Calabresi, Hon. Barrington D. Parker, Hon. Peter W. Hall, Circuit Judges.

IT IS HEREBY ORDERED that the motion is DENIED as moot in light of mandate issued on 11/25/08.

Filed Dec 15 2008

Date of Entry December 15, 2008

FOR THE COURT:
Catherine O' Hagan Wolfe, Clerk
by
/s/Judy Pisnanont, Motions Staff Attorney

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTICT OF NEW YORK

----------X

In re:	Chapter 11
GRANITE BROADCASTING CORPORTATION, et al	Case No. 06-12984 (ALG)

(Jointly Administered)

Reorganized Debtors

----------X

JUNE FOSTER,

Appellant,

07-CV-6217(CM)

-against-

GRANITE BROADCASTING CORPORATION, et al,

Appellees.

----------X

DECISION AND ORDER AFFIRMING THE BANKRUPTCY COURT'S ESTIMATION ORDER AND DISMISSING FOSTER'S APPEAL OF THE CONFIRMATION ORDER

McMahon, J.:

Before this Court is an appeal of June Foster ("Appellant" or "Foster") of the Orders of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), dated May 18, 2007 and May 22, 2007, respectively (collectively, the "Bankruptcy Court Orders"), that (i) estimated the claims asserted by Foster (the "Foster Claims") at $ 0 for allowance, voting, and distribution purposes (the "Estimation Order") and (ii) confirmed the Modified First Amended Joint Reorganization Plan Under Chapter 11 of the Bankruptcy Code

(the "Plan") of the Reorganized Debtors (the "Confirmation Order"). For the reasons set forth herein, the Court affirms the Estimation Order and dismisses Foster's appeal of the Confirmation Order as moot.

BACKGROUND

A. June Foster Litigation

Foster has been litigating against Granite for approximately six years. (ROA-15, Exhibit A at 1. [1])

1 Citations in the format "ROA- at " refer to the document number set forth, as applicable, in the Record of Issues on Appeal Pursuant to *Bankruptcy Rule 8006* filed by Foster (the "ROA"), Appellees' Counter-Designation of the Record and Restatement of Issues on the Appeal of June Foster (the "Granite ROA"), and Amended Record and Issues on Appeal, Pursuant to *Bankruptcy Rule 8006* (the "Amended ROA"), followed by the page and paragraph of such document.

From March 2000 to June 2001, Foster worked at KNTV TV, Inc. ("KNTV," together with Granite, the "Defendants"), a San Jose-based television station owned at the time by Granite. (Id. at 2, P 2,3.) On June 27, 2001, KNTV terminated Foster's employment. Believing she had been wrongfully terminated, Foster sued Granite and KNTV in California Superior Court on November 21, 2001 (the "State Court Action"). She alleged that she had been fired in retaliation and for discrimination and in violation of public policy. (ROA-15, Exhibit A.) Foster also alleged that Granite's termination of Foster violated Title VII, *42 U.S.C. section 2000e.* (Id.)

On December 28, 2001, Defendants removed the State Court Action to the District Court for the Northern District of California (the "California District Court"). (ROA-15, Exhibit L at 3.) On May 8, 2002, as a result of Foster's amendment of her complaint to dismiss the Title VII count and her subsequent motion for remand (which was opposed by Defendants), the California District Court remanded the action back to state court. (Id. at 1.)

On June 29, 2003, Foster filed a second amended complaint alleging the following causes of action: (i) retaliation for reporting unlawful discrimination, namely KNTV's

termination of Foster's employment; (ii) retaliation for reporting unlawful discrimination, namely KNTV's issuance of a poor performance review to Foster; (iii) violation of public policy; (iv) creation of a hostile work environment in violation of California law; (v) intentional infliction of emotional distress; and (vi) equitable relief. (ROA-15, Ex. B.)

On October 23, 2003, the California state court granted summary judgment to the Defendants with respect to Foster's claims for (i) the creation of a hostile work environment and (ii) intentional infliction of emotional distress. (ROA-15, Ex. M.) The court then held a jury trial on whether KNTV's issuance of a negative performance review to and/or termination of Foster were actions taken in retaliation for Foster having complained about perceived discrimination, and therefore violations of the California Fair Employment and Housing Act, *Cal. Gov. Code § 12940 et seq.* and/or public policy. After 18 days of trial, on January 7, 2004, the jury returned a unanimous verdict in favor of the Defendants and against Foster. (ROA-15, Exhibit C.)

Foster's post-trial motions seeking to overturn the verdict were denied by the trial court in an order dated April 9, 2004. (ROA-15, Ex. N at 3-4.) The trial court similarly denied

Foster's motion for reconsideration, in an order dated July 1, 2004. (Id.)

Foster appealed to the California Court of Appeals, asserting, among other things: (i) errors regarding the admission and exclusion of certain evidence during the trial; (ii) error regarding an improper jury instruction; and (iii) that the jury's verdict was not supported by substantial evidence. (ROA-15 at 9-10, P 2.) On May 25, 2006, the California Court of Appeal, Sixth Appellate District, affirmed the trial court in all respects. (ROA-1, Ex. O.)

Foster then sought review by the California Supreme Court. On August 16, 2006, the California Supreme Court denied Foster's Petition for Review. (Appellant's Brief at 17.) Foster did not appeal this denial to the United States Supreme Court, and her time to file such an appeal expired 90 days later on November 14, 2006. See *28 U.S.C. § 2101(c); SUP. CT. R. 13.*

On September 15, 2006, Foster filed a Petition for Removal (the "Petition for Removal") with the California District Court purporting to remove the State Court Action to federal court. (ROA-15, Ex. H.)

In the Petition for Removal, Foster sought a review of the jury verdict and the state court appellate decisions upholding such verdict. (Id.) Foster alleged various errors in the evidence at trial and in an instruction to the jury in the State Court Action that she claimed violated her rights under both the U.S. Constitution and the California Constitution. (Id.) Among other things, Foster alleged that the jury trial and verdict in the State Court Action deprived her of rights under the *Fourteenth* and *Seventh Amendments to the U.S. Constitution*, including equal protection rights, due process rights, and property rights. (Id.) [**6] Foster's Petition for

Removal also raised new claims based on the same facts litigated in the State Court Action, including a claim under *42 U.S.C. § 1983.* (Id.)

Foster also filed a request to proceed *in forma pauperis,* which the California District Court denied without prejudice on October 6, 2006 (the "October 6 Decision"), finding that

> Plaintiff seeks to remove a civil rights action for retaliatory firing from the California state courts and litigate it in federal court. This action was subject to a jury trial in California, and plaintiff unsuccessfully appealed to the California Court of Appeals and the California Supreme Court . . . . The Court concludes that the Plaintiff's action is without merit on its face. The principle of comity requires that federal courts respect the judgments of state courts. The Court does not have the authority to review the judgment of the California Supreme Court in this case.

(ROA-15, Ex. I at 1-2.)

On October 10, 2006, Defendants filed a motion to dismiss or strike the Federal Court Action. (ROA-15, Ex. K.) Foster responded by filing a request for permission to file an amended petition for removal. (ROA-15, Ex. J at 1-2.) In an order dated November 16, 2006 (the "November 16 Decision"), the California District Court denied Foster's request without prejudice, noting, "The Court concluded in its October 6, 2006 order that Foster's action is without merit on its face," that the California District Court "reaffirms this conclusion" and that, "It appears from the face of the complaint that the Court likely lacks subject matter jurisdiction." (Id.)

On November 27, 2006, Foster filed two notices of appeal with the United States Court of Appeals for the Ninth Circuit of the California District Court's decisions denying (i) Foster's motion to proceed *in forma pauperis* and (ii) Foster's motion for leave to amend her petition for removal. (See Order, Case No. 06-17254 (9th Cir. May 14, 2007) (unpublished).) Foster also contemporaneously filed a motion with the Ninth Circuit to proceed *in forma pauperis.* (Id.)

On December 8, 2006, upon request of Foster,

the California District Court stayed the Federal Court Action pending Foster's appeal to the Ninth Circuit. (See Civil Docket No. 45, Case No. 06-05688 (JF) (the "District Court Docket").) On February 22, 2007, the Ninth Circuit issued an order denying Foster's motion to proceed *in forma pauperis*. (ROA-15, Ex. K.) The Ninth Circuit's order (i) required Foster to pay fees to the district court for docketing and filing the appeal within 21 days of the order; (ii) provided that a failure by Foster to pay these fees will result in the dismissal of her appeal; and (iii) noted the pending bankruptcy case and stayed the appeal pending further order of the court. (Id.)

On May 14, 2007, United States Court of Appeals for the Ninth Circuit summarily affirmed the district court's November 16, 2006 orders denying Foster's request to proceed *in forma pauperis* and motion to amend her petition for removal. (See Order, Case No. 06-17254 (9th Cir. May 14, 2007) (unpublished).) Foster did not appeal this decision to the United States Supreme Court, and her time to file such an appeal expired on August 13, 2007. See *28 U.S.C. § 2101(c), Sup. Ct. R. 13.* The Ninth Circuit denied plaintiff's motion for a rehearing en banc and on July 6, 2007 issued the mandate, divesting the Ninth Circuit of jurisdiction. (Letter from Richard W. Wieking, Clerk, dated July 10, 2007.)

On June 13, 2007, the California District Court dismissed the Federal Court Action, because Foster failed to appear at a Court-scheduled conference. (Order, Case No. 06-05688 (JF) (N.D. Cal. June 13, 2007) (unpublished).) Foster subsequently filed for relief from dismissal. On July 31, 2007, the California District Court entered an order granting such relief, but admonishing Foster that:

> Plaintiff should pay the filing fee in this action within thirty days of the date of this order . . . . Plaintiff's letter also informed the Court of her

> worsened financial situation. While the Court is sorry to hear of this change, because the Court previously concluded that Plaintiff's action is without merit on its face, Plaintiff may not proceed in forma pauperis.

(See Order, Docket No. 65, Case No. 06-05688 (JF) (N.D. Cal. July 31, 2007) (unpublished).)

B. Relevant Facts Regarding the Debtors' Chapter 11 Cases, Plan, and the Estimation Order

Together, Granite and its affiliates form one of the largest minority-operated television broadcasting companies in the United States. Granite focuses primarily on developing and operating small to middle-market television broadcasting stations along with two large-market

stations in Detroit and San Francisco. Granite and its affiliates own and operate one full-power independent and eight full-power network-affiliated television stations in geographically diverse markets reaching over 6% of the nation's television households and have contracts to provide advertising, sales, promotion services, administrative services, and selected programming to four additional stations. Each of Granite and its affiliates' ABC, NBC, and CBS affiliates are leading providers of local news, weather, and sports in their respective markets.

On December 11, 2006 (the "Petition Date"), the Debtors each commenced with the Bankruptcy Court a voluntary case under chapter 11 of the Bankruptcy Code. (Confirmation Decision at *2.) On the same date, the Debtors filed the Plan (which was subsequently modified and amended). (Id. at *12.)

Prior to the Petition Date, the Debtors engaged in several months of negotiations with Silver Point Finance, LLC and its legal advisors that culminated in the restructuring proposed in the Plan, which permitted the Debtors to minimize their time in chapter 11 and reduce the attendant effects on the operation of the Debtors' businesses.

On January 15-16, 2007, the Debtors filed their schedules of assets and liabilities and statements of financial affairs in these cases. (ROA-43 (Appellees' Counter-Designations) at 15-16.) The Debtors listed the Foster Claims on Granite's Schedule F with the amount listed as "unknown" and the claims identified as contingent, disputed, and unliquidated. (Id.)

On February 16, 2007, the Court entered an order setting March 27, 2007 as the bar date for filing proofs of claim relating to certain claims, including the Foster Claims. (ROA-15 at 11, P 34.)

1. Estimation Proceedings

Because proofs of claims were due but two and a half weeks before the hearing to consider confirmation of the Plan (April 13, 2007), it was imperative that any contingent and unliquidated claims be fixed so as to determine the confirmability of the Plan. Section 10.1(c) of the Reorganization Plan contained a condition to confirmation that provided "[t]he Confirmation Order shall contain a finding that the aggregate amount of Cash necessary to satisfy Allowed Claims in Classes 4A, 5, 6, 7, 8, and 9 shall not exceed $ 11.0 million." (ROA-44 (Appellees' Counter-Designations).)

Accordingly, on March 15, 2007, the Debtors filed their Motion Pursuant to *Sections 502(c)* and *105(a) of the Bankruptcy Code* to Estimate Claim of June Foster (the "Estimation [Motion") seeking to estimate the Foster Claims at $ 0 for voting, allowance, and distribution purposes. (ROA-15.) Foster timely filed an objection to the Estimation Motion. (ROA-16.)

On March 21, 2007, Foster filed a proof of claim against the Debtors' estates in the amount of $ 10 million. On March 22, 2007, Foster filed another duplicate claim against the Debtors' bankruptcy estates.

On April 11, 2007, the Bankruptcy Court held a hearing on the Estimation Motion at which Foster participated and advocated telephonically, as she requested. At such time, the Bankruptcy Court reserved decision on the Estimation Motion.

On May 18, 2007, the Bankruptcy Court entered the Estimation Order estimating the Foster Claims at $ 0 for all purposes. (See Estimation Order.) In granting the relief sought in the Estimation Motion, the Bankruptcy Court noted that "Ms. Foster has been denied substantive relief on her claim in repeated attempts in both State and federal courts, and there is no reason to

believe her final appeal to the Ninth Circuit has any likelihood of success whatsoever." (Id.)

2. Confirmation Proceedings

Foster also objected to confirmation of the Plan on the sole ground that the Plan allegedly failed to treat the Foster Claims in a manner consistent with the treatment provided to similarly situated Claims in Class 4A (the class in which claims against Granite were classified) and, thus, allegedly violated various provisions of the Bankruptcy Code. (ROA-25.) The hearing to consider confirmation of the Plan began on April 16, 2007 and concluded on April 30, 2007. (See Confirmation Decision at *18-19.)

On May 18, 2007, the Bankruptcy Court issued its written Confirmation Decision. The Confirmation Order, however, was not entered until May 22, 2007 after the Bankruptcy Court held a hearing on the proper form of order.

3. Post-Confirmation and Estimation Order Pleadings

Thereafter, Foster filed a series of motions with the Bankruptcy Court. Specifically, Foster filed the following pleadings:

. a motion to reconsider the

Bankruptcy Court Orders, dated May 26, 2007 (the "First Motion to Reconsider");

. her notice of appeal of the Confirmation Order and Estimation Order, dated May 26, 2007;

. an ex parte letter seeking to disqualify Judge Gropper, dated May 26, 2007 (the "First Disqualification Request");

. an amended notice of appeal, dated June 4, 2007; and

. the Record and Issues on Appeal, Pursuant to *Bankruptcy Rule 8006*, dated June

4, 2007, which was amended by Foster on July 18, 2007.

On June 1, 2007, Stuart M. Bernstein, Chief Judge of the Bankruptcy Court, denied the First Disqualification Request. In a letter to Foster, Chief Judge Bernstein stated that Foster's letter:

> does not identify any specific instance of bias, and I do not infer that he was biased from his decision. If you believe that you have been aggrieved by Judge Gropper's ruling, you are free to pursue whatever appellate rights you may have. Furthermore, if you desire the disqualification of Judge Gropper, you must direct your disqualification motion to him, not me. I do not intend to take any action in this matter.

(ROA·65 (Appellees' Counter Designations).)

On June 6, 2007, the Bankruptcy Court denied the First Motion to Reconsider, [stating, "Ms. Foster has submitted papers in which she purports to move for reconsideration of both the

Confirmation Order and the Estimation Order but has cited no new facts or law which the Court overlooked or any valid grounds for reconsideration of the orders."

On the same day, Foster filed another pleading seeking to disqualify Judge Gropper from "making any more orders as it relates to any further post-Confirmation motions and my recent Motion to Re-estimate my Claim" (the "Second Disqualification Motion").

In addition, taking the Bankruptcy Court's decision on the First Motion to Reconsider as an invitation to cite to "new facts or law which the Court overlooked," on June 11, 2007, Foster filed a second motion to reconsider the Bankruptcy Court Orders (the "Second Motion to Reconsider"). (ROA-46 (Amended Record).)

On June 30, 2007, Foster filed a motion to compel mediation of the Foster Claims (the "Mediation Motion"). (ROA-52 (Amended Record).)

On July 12, 2007, the Bankruptcy Court issued an order denying the Meditation Motion, Second Disqualification Motion, and Second Motion to Reconsider. (ROA-54 (Amended Record).)

C. Implementation of the Reorganization Plan

Following entry of the Confirmation Order, certain holders of Granite's pre-petition preferred stock (including Harbinger Capital Partners) requested a stay of the Confirmation Order pending appeal and also filed a notice of appeal of the Confirmation Order. The stay was denied and the appeal has been voluntarily dismissed. (ROA-39 (Amended Record).) The Debtors implemented the Plan, including, without limitation, (i) receiving approval from the Federal Communications Commission to transfer the television broadcasting licenses held by the Debtors to the Reorganized Debtors; (ii) entering into numerous agreements, including entry into a new secured term loan and secured revolver, in the aggregate amount of $ 250 million; (iii) filing new certificates of incorporation and bylaws relating to the reorganized legal entities with the secretary of state in the appropriate jurisdictions; (iv) cancellation of prepetition indebtedness and equity interests; (v) distributing cash in

satisfaction of all allowed general unsecured claims against the Debtors' estates and other cash expenses under the Plan; and (vi) issuing approximately 11 million new equity interests and warrants to purchase equity interests in Reorganized Granite.

On June 4, 2007, the Plan became effective and the Debtors emerged from chapter 11 and began conducting business as the Reorganized Debtors. (ROA-66 (Appellee's Counter-Designations).

DISCUSSION

A. Standard of review

"On appeal the district court . . . may affirm, modify, or reverse a bankruptcy judge's judgment, order or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of witnesses." *Fed. R. Bankr. P. 8013*; see also *In re Blaise, 219 B.R. 946, 950 (2d Cir. BAP 1998)*. A bankruptcy judge's legal conclusions are reviewed *de novo*. See *In re Cody, 338 F.3d 89, 94 (2d Cir. 2003)*; In re 139-*141 Owners Corp., 313 B.R. 364, 367 (S.D.N.Y. 2004)*.

B. Foster's Appeal of the Estimation Order

In her principal brief, Foster argues that the Bankruptcy Court erred with respect to the entry of the Estimation Order because: (i) the Bankruptcy Court did not have jurisdiction to estimate her Claims for distribution purposes pursuant to *section 157(b)(2)(B)* of the Judicial Code because such Claims are "personal injury claims;" (ii) the Bankruptcy Court improperly disallowed the Foster Claims by estimating such

Claims at $ 0 for all purposes; and (iii) the Bankruptcy Court's chosen method of estimating the Foster Claims at $ 0 was an abuse of discretion.

First, the Foster Claims have no basis in law or fact and have been repeatedly rejected by every court in which they have been asserted. Moreover, the claims were fully and finally resolved by the California state courts and such resolution is subject to the Full Faith & Credit Act, and are precluded by the doctrine of claim preclusion because they arise from the same facts as the State Court Action, namely KNTV's termination of her employment. Finally, Foster's

§ 1983 claim is time-barred, because it expired on June 27, 2003, two years after KNTV terminated Foster's employment. See *Cal. Civ. Proc. Code § 335.1.* [2] Thus, the Bankruptcy Court properly estimated the Foster Claims at $ 0.

> 2 Foster asserts that the predecessor version of *section 335.1* applies, because the current version of *section 335.1* was enacted after Foster initiated the State Court Action (but several years before she filed the Federal Court Action with her *section 1983* claim). Regardless, the predecessor version of *section 335.1* actually provided for a one-year limitations period for personal injury actions, so this argument is of no help to Foster.

Second, the Bankruptcy Court properly exercised its jurisdiction in estimating Foster's claims. Even assuming *arguendo* that the Foster Claims are "personal injury claims," the Bankruptcy Court was still within its authority to make the threshold determination of whether the Foster Claims are allowable and whether such claims are subject to estimation for all purposes at $ 0. See *In re Chateaugay Corp., 111 B.R. 67, 76-77 (Bankr. S.D.N.Y. 1990)* (Chatteaugay I) ("A bankruptcy court has the right and duty to disallow claims as a threshold

matter, if *no legal basis* for the claim exists against the debtor."), *aff'd, 146 B.R. 339 (S.D.N.Y. 1992); In re Aquaslide 'N' Dive Corp., 85 B.R. 545, 549 (9th Cir. BAP 1987)* (finding that the bankruptcy court's disallowance of personal injury claims through estimation was proper); *In re U.S. Lines, Inc. v. U.S. Lines Reorganization Trust, 262 B.R. 223, 234 (S.D.N.Y. 2001); In re U.S. Lines, Inc., 2006 U.S. Dist. LEXIS 37114, 2006 WL 1559237, at *6 (S.D.N.Y. 2006).*

Finally, the Bankruptcy Court did not abuse its discretion by using a "binary approach" to estimate the Foster Claims. Bankruptcy judges have wide discretion in selecting a method for estimating claims, and may use "whatever method is best suited to the circumstances." *11 U.S.C. § 105(a);* see also *Maxwell v. Seaman Furniture Co. (In re Seaman Furniture Co. of Union Square), 160 B.R. 40, 42 (S.D.N.Y. 1993)* (citing *Addison v. Langston (In re Brints Cotton*

Mktg., Inc.), 737 F.2d 1338, 1341 (5th Cir. 1984)); *Bittner v. Borne Chemical Co., 691 F.2d 134, 135 (3d Cir. 1982)*. The Bankruptcy Court exercised its sound discretion to determine, like the California District Court and the courts in the State Court Action, that on their face, the Foster Claims lack merit. The court thus properly disallowed the Foster Claims and valued them at $ 0 for all purposes.

C. Foster's Appeal of the Confirmation Order

In essence, Foster's appeal is really an appeal of the Estimation Order and not the Confirmation Order. However, the Court need not even reach the merits of the appeal of the Confirmation Order, because Foster's appeal to this Court is moot.

Under well established authority, when a plan of reorganization has been substantially consummated, as is the case here, an appeal of the Confirmation Order is presumed moot. See *Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136, 144 (2d Cir. 2005)*; *Aetna Casualty & Surety Co. v. LTV Steel Co., Inc. (In re Chateaugay Corp.), 94 F.3d 772, 776 (2d Cir. 1996)* ("Chateaugay III") ("Reviewing courts presume that it will be inequitable or impractical to grant relief after substantial

consummation of a plan of reorganization."). This doctrine "advances the policy of affording finality to the orders and judgments of the bankruptcy court." *Lawrence v. Revere Copper & Brass Inc. (In re Revere Copper & Brass Inc.), 78 B.R. 17, 21 (S.D.N.Y. 1987).*

The presumption of mootness may be rebutted, but only upon a showing that:

> (a) the court can still order some effective relief; (b) such relief will not affect the re-emergence of the debtor as a revitalized corporate entity; (c) such relief will not unravel intricate transactions so as to knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation in the Bankruptcy Court; (d) the parties

> who would be adversely affected by the modification have notice of the appeal and an opportunity to participate in the proceedings; and (e) the appellant pursued with diligence all available remedies to obtain a stay of execution of the objectionable order if the failure to do so creates a situation rendering it inequitable to reverse the orders appealed from.

Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.), 10 F.3d 944, 952-53 (2d Cir. 1993) ("Chateaugay II") (citations and internal quotations omitted).

The Court has no doubt that the Plan has been substanitally consummated.

Substantial consummation is defined in *11 U.S.C. § 1101* as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."

In this case, all of the property of the Debtors

proposed to be transferred and all equity interests in the Debtors proposed to be cancelled under the Plan have been transferred and cancelled, respectively; the Reorganized Debtors have assumed all business operations and all property dealt with by the Plan; and the Reorganized Debtors not only have commenced distributions under the Plan, but such distributions have been completed. Appellees submit that since the Effective Date, among other things, (1) the Reorganized Debtors have assumed all assets and properties and are operating the entire reorganized enterprise; (2) in excess of $ 10.5 million in cash distributions have been made under the Plan, in satisfaction of a myriad of claims; (3) approximately 10 million shares of new common stock and 1 million warrants to purchase new common stock of the Reorganized Debtors (representing nearly all stock distributions to be made under the Plan) have been made to creditors and equityholders in

satisfaction and discharge of their claims; (4) all common and preferred stock held by Granite's pre-existing shareholders have been cancelled; (5) $ 250 million in the secured Exit Term Loan has been incurred by the Reorganized Debtors and owed to various creditors; and (6) executory contracts and unexpired leases have been assumed by the Reorganized Debtors in reliance on the restructuring effected by the Plan.

Appellant cannot establish any-- let alone all five-- of the *Chateaugay II* requirements to rebut the presumption of mootness.

1. *Foster fails to address the "re-emergence of the debtor as a revitalized corporate entity" requirement*

Foster, a *pro se* appellant, seems to have misread the five Chateaugay II requirements-- she erroneously substituted a "substantial consummation" requirement for this factor. The "substantial consummation" of a reogranization plan establishes the presumption of mootness; this factor, on the other hand, is necessary to rebut that presumption. Thus, appellant has obviously failed to satisfy this requirement.

Moreover, it is clear that Appellant's requested relief of $ 10 million would threaten

the Reorganized Debtors' ongoing viability as successfully reorganized business enterprises. According to the Appellees, the relief being sought by Appellant would result in the reinstatement of approximately $ 500 million of secured indebtedness that the Reorganized Debtors are, and the Bankruptcy Court found the Reorganized Debtors to be, incapable of servicing.

Furthermore, the relief would potentially undo key settlement agreements that, once consummated, permitted Appellees to amend the Plan to pay all unsecured creditors in full.

Under this scenario, not only would the Reorganized Debtors undoubtedly breach existing contractual relationships, with the attendant loss of substantial revenues, but there also would be a potential inability to secure new programming contracts, which could lead to a liquidity crisis, and the obvious consequences attendant thereto.

2. Foster failed to request a stay

Appellant never attempted to seek a stay of either the Confirmation Order pending appeal, either in the Bankruptcy Court or in this Court, nor did she even request an expedited appeal. Rather, Foster filed a multitude of post-confirmation pleadings (all of which were denied) and sought additional time prior to the filing of her brief.

It is well settled that "when a stay of an order confirming a reorganization plan pending appeal has not been obtained and the plan has been consummated, the appeal may be dismissed as moot." *In re Revere Copper and Brass Inc., 78 B.R. 17, 20 (S.D.N.Y. 1987)* (collecting cases); *In re Metromedia, 416 F.3d at 145.*

Appellant argues that she did not obtain a stay, because the "bankruptcy court would have

certainly denied it." (Reply Br. at 7.) However, the Second Circuit demands that a party seek a stay "even if it may seem highly unlikely that the bankruptcy court will issue one." *In re Metromedia Fiber Network, Inc., 416 F.3d 136, 144 (2d Cir. 2005)* (citing *Chateaugay I, 988 F.2d at 326* ("A party cannot escape the obligation to protect its litigation position by so facile an argument.")).

3. Effective Relief Cannot Be Granted

At this juncture, it is not likely that effective relief can be granted, because so many transactions have occurred since June 4, 2007.

4. Foster's Requested Relief Would Unravel Intricate Transactions

Unwinding or unraveling a substantially consummated plan, as Foster seeks here, "would work incalculable inequity to many who have extended credit, settled claims, relinquished collateral and transferred or acquired property in legitimate reliance on the unstayed order of confirmation." *Six W. Retail Acquisition, Inc. v. Loews Cineplex Entm't Corp., 286 B.R. 239, 247 (S.D.N.Y. 2002)* (quoting *In re Pub. Serv. Co of N.H., 963 F.2d 469, 475 (1st Cir. 1992)).*

Numerous third parties have changed their economic position in reliance on the implementation of the Plan. And, because many of the distributions pursuant to the Reorganization Plan were made through financial intermediaries, the actual identities of the holders of the exit loan and common stock are not even known. Moreover, it is likely that many of the holders of such debt and equity have long since sold to third parties some or all of the their debt or equity.

To unravel the multiple intricate transactions that have transpired pursuant to the Reorganization Plan would "knock the props

out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the Bankruptcy Court." *In re Metromedia, 416 F.3d at 144* (quoting *In re Roberts Farms, Inc., 652 F.2d 793, 797 (9th Cir. 1981)).*

5. The Parties Adversely Affected Were Not Notified of the Appeal

As set forth above, the Reorganized Debtors' creditors, customers, vendors and other parties in interest would suffer irreparable harm if the relief sought in the Appeal were granted. Appellant has failed to notify these parties of the Appeal as is required under the fourth prong of the Chateaugay II test.

Because the Plan has been substantially consummated and Foster cannot establish any -- let alone all five -- of the Chateaugay II requirements to rebut the presumption of mootness, the Court has no alternative but to dismiss the appeal of the Confirmation Order as moot. See *Kassover v. Gibson, 2003 U.S. Dist. LEXIS 8765, 2003 WL 21222341, at *2-3 (S.D.N.Y. May 27, 2003); Six West Retail Acquisition, Inc. v. Loews Cineplex Entm't Corp., 286 B.R. 239, 245 (S.D.N.Y. 2002).*

CONCLUSION

For the foregoing reasons, the Bankruptcy Court's Estimation Order is AFFIRMED and Foster's appeal of the Confirmation Order is DISMISSED as moot.

Dated: April 3, 2008

Entry of Judgment: April 7, 2008

/s/ Colleen McMahon

U.S.D.J.

BY FIRST CLASS MAIL TO ALL PARTIES
BY FAX TO THE HON. ALLAN L. GROPPER
U.S.B.J.

ENTRY OF JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTICT OF NEW YORK

----------X

In re:
GRANITE BROADCASTING
ORPORTATION, et al

Reorganized Debtors
----------X

JUNE FOSTER,

Appellant,

07 CIVIL 6217

-against-

JUDGMENT

GRANITE BROADCASTING
CORPORATION, et al,
Appellees.

----------X

SCANNED

Appellant having appealed from the Orders of the United States Bankruptcy Court for the Southern District of New York, and the matter having come before the Honorable Colleen McMahon, United States District Judge, and the Court, on April 3, 2008, having rendered its Decision and Order affirming the Bankruptcy Court's Estimation Order and dismissing Foster's appeal of the Confirmation Order as moot, it is,

ORDERED,ADJUDGED AND DECREED: that for the reasons stated in the Court's decision and Order dated April 3, 2008, the Bankruptcy Court's Estimation Order is affirmed and Foster's appeal of the Confirmation Order is dismissed as moot.

Dated: New York, New York

April 7, 2008

J. Michael McMahon

_____

Clerk of the Court

BY:___\s_____

Deputy Clerk

BANKRUPTCY COURT ORDER ESTIMATING PERSONAL INJURY CLAIM FOR PURPOSES OF DISTRIBUTION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

Case No. 06-12984 (ALG)

In re: Chapter 11

GRANITE BROADCASTING CORP., et al.
ORDER
----------X

The Debtors in the above referenced bankruptcy case have moved for an order estimating June Foster's alleged claim (the "Claim") at $0, for purposes of allowance, voting, and distribution under the Debtors' pending plan of reorganization. Ms. Foster opposed this motion pro se in her papers and at a telephonic hearing held on this matter on April 11, 2007.

Ms. Foster is an ex-employee of KNTV TV, Inc.,

which was a subsidiary of the Debtors at the time of her employment. She was terminated in 2001 and thereafter sued one or more of the Debtors in the Superior Court of California (the "State Action"), alleging, inter alia, that her discharge was in retaliation for reporting unlawful discrimination and in violation of public policy. The Debtors defeated the State Action partially through summary judgment and partially through a trial at which they received a unanimous jury verdict in their favor. Ms. Foster subsequently moved to set aside or reconsider the verdict, which was denied. She then appealed and lost before the California Court of Appeals, and did not seek any further appeal.

Ms. Foster then filed a petition to remove the State Action to the United States District Court for the Northern District of California (the "Federal Action"), which was denied. The Debtors then moved to remand, strike, and dismiss the Federal Action, in response to which Ms. Foster moved to amend the petition for removal; the District Court denied her motion. She then appealed that denial to the Ninth Circuit Court of Appeals, which stayed the appeal pending further order as a result of the Debtors' bankruptcy filing.

Pursuant to 11 U.S.C. § 502(c)(1), the Court

mayestimate a contingent or unliquidated claim in order to avoid undue delay in the administration of the case. For that reason, estimation should be an expeditious process. See In re Thomson McKinnon Sec. Inc., 143 B.R. 612, 619 (Bankr. S.D.N.Y. 1992). In this case, the Debtors' pending plan that the Court is today confirming by separate Order has a condition that general unsecured claims not exceed $11 million, requiring liquidation of potential claims. Ms. Foster has asserted claims against the Debtors in her lawsuits in the approximate amount of $10 million and has asserted that this amount is still owed her. Failure to estimate the claim would result in undue delay to the administration of this case.

In estimating a claim, "the bankruptcy court should use whatever method is best suited to the circumstances." In re Brints Cotton Mktg., Inc., 737 F.2d 1338, 1341 (5th Cir. 1984). Here, Ms. Foster has been denied substantive relief on her claim in repeated attempts in both State and federal courts, and there is no reason to believe that her final appeal to the Ninth Circuit has any likelihood of success whatsoever. The Court finds that the Claim must be estimated at zero. Based on the foregoing, it is

ORDERED, that, pursuant to 11 U.S.C. § 502(c)(1), for purposes of allowance, voting, and

distribution under the Debtors' pending plan of reorganization, the Claim of June Foster is estimated at $0.
Dated: New York, New York

May 18, 2007 Date of Entry May 18, 2007

/s/ Allan L. Gropper _

United States Bankruptcy Judge

CONSTITUTIONAL PROVISIONS, FEDERAL STATUES, AND RULES OF COURT

28 U.S.C. Section 157 (b)(1): Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

28 U.S.C. section 157 (b)(2)(B): Core proceedings include, but are not limited to allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, 13 of title 11 but not the liquidation or estimation of contingent or antiquated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

28 U.S.C. section 157 (b)(2)(O): Other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security relationship, except personal injury tort or

wrongful death claims; and

28 U.S.C. section 157(b)(5): The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.
(Added Pub. L. 98-353, Title I sec. 104(a), July 10, 1984, 98 Stat. 340 and amended Pub. L. 99-554, Title I, sec. 143, 144(b), Oct. 27, 1986, 100 Stat. 3096; Pub. L. 103-394, Title I, section 112, Oct. 22, 1994, 108 Stat. 4117; Pub. L. 109-8, Title VIII, sec. 802(c)(1), Apr. 20, 2005, 119 Stat. 145.)

28 U.S.C. Section 158 (a)(1): The district courts of the United States shall have jurisdiction to hear appeals (1) from final judgments, orders, and decrees.

28 U.S.C. Section 1334 (a): Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

28 U.S.C. 157 (c)(1): A bankruptcy judge may hear a proceeding that is not a core proceeding

but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

Act of Congress that further establishes Title 28 section 157: Public Law 98-353, Sec. 104 [H.R. 5174]; July 10, 1984. BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIPS ACT OF 1984-An Act to amend title 28 of the United States Code regarding jurisdiction of bankruptcy proceedings, to establish new Federal judicial positions, to amend title 11 of the United States Code, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bankruptcy Amendments and Federal Judgeship Act of 1984."

11 U.S.C. section 502(a): A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a

case under Chapter 7 of this title, objects. (Pub. L- 95-598, Nov. 6, 1978, 92 Stat. 2579; Pub. L. 98-353, Title III section 445, July 10, 1984, 98 Stat. 373; Pub. L. 99-554, Title II section 257(j), 283(f) Oct. 27, 1986, 100 Stat. 3113, 3117, Pub. L. 103-394, Title II, section 213(a), Title III section 304(h) (1), Oct. 22, 1994, 108 Stat. 4125, 4134.)

Act of Congress that further establishes Title 11 section 502(a): Public Law 98-353 [H.R. 5174]; July 10, 1984. BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIPS ACT OF 1984- An Act to amend title 28 of the United States Code regarding jurisdiction of bankruptcy proceedings, to establish new Federal judicial positions, to amend title 11 of the United States Code, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bankruptcy Amendments and Federal Judgeship Act of 1984."

11 section 1123(a)(4): Notwithstanding any otherwise applicable no bankruptcy law, a plan shall provide the same treatment for each claim or interest of a particular class, unless the holder of a particular or interest agrees to a less favorable treatment of such particular claim or interest. (Pub. L. 95-598 Nov. 6, 1978, 92 Stat.

2631; Pub. L. 98-353, Title III, section 507, July 10, 1984, 98 Stat. 385; Pub. L. 103-394, Title II, section 206, Title III, section 304 (h)(6), 305(a), Title V, section 501(d)(31), Oct. 22, 1994, 108 Stat. 4123,4134, 4146)

Public Law 98-353 [H.R. 5174]; July 10, 1984. BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIPS ACT OF 1984-An Act to amend title 28 of the United States Code regarding jurisdiction of bankruptcy proceedings, to establish new Federal judicial positions, to amend title 11 of the United States Code, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bankruptcy Amendments and Federal Judgeship Act of 1984."

U.S.C. section 1129 (b)(1):(b) (1)
Notwithstanding section 510 (a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. section 1129(a)(7)(A)
(a) The court shall confirm a plan only if all of the following requirements are met:
(7) With respect to each impaired class of claims or interests—
A each holder of a claim or interest of such class----"
(i) has accepted the plan; or
(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7of this title on such date; or

Federal Rules of Bankruptcy Procedures Rule 9033(d): The district court shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.

28 U.S.C. section 1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit,action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith. (b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall

assess and, when funds exist, collect, as a partial payment

of any court fees required by law, an initial partial filing fee of 20 percent of the greater of - (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of to complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing in a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the

prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of
this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that - (A) the allegation of poverty is untrue; or (B) the action or appeal -

(i) is frivolous or malicious;
(ii) fails to state a claim on which relief may be granted;
Or (iii) seeks monetary relief against a defendant who is immune from such relief.

Federal Rules of Appellate Procedure, Rule 24(c) Manner of Service.
(1) Service may be any of the following:(A) personal, including delivery to a responsible person
at the office of counsel;(B) by mail;
(C) by third-party commercial carrier for delivery within 3 calendar days; or (D) by electronic means, if the party being served consents in writing.
(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).
(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.
(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

Federal Rules of Appellate Procedure, Rule 26
(b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:
(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or
(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

Federal Rules of Appellate Procedure, Rule 35
(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.
(1) The petition must begin with a statement that either:
(A) the panel decision conflicts with a decision of the
United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or
(B) the proceeding involves one or more

questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.
(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

Federal Rules of Appellate Procedure, Rule 40. Petition for Panel Rehearing
(a) Time to File; Contents; Answer; Action by the Court if Granted.
(1) Time. Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time.

Federal Rules of Appellate Procedure, Rule 41. Mandate: Contents; Issuance and Effective Date; Stay
(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a

certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.
(b) When Issued. The court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing,
petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.
(c) Effective Date. The mandate is effective when issued.
(d) Staying the Mandate.
(1) On Petition for Rehearing or Motion. The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.
(2) Pending Petition for Certiorari
(A) A party may move to stay the mandate pending the
filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.
(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for

the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.
(C) The court may require a bond or other security as a
condition to granting or continuing a stay of the mandate.
(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

OTHER ESSENTIAL MATERIAL

EXCERPT FROM CORPORATE RESPONDENTS REORGANIZED CHAPTER 11 PLAN

Procedures for Treating Disputed Claims

1. No Distribution Pending Allowance.

Notwithstanding any other provision of the Plan, no Cash shall be distributed under the Plan on account of any Claim that is not Allowed, unless and until such Claim becomes an Allowed Claim. Notwithstanding any other provision of the Plan, no interest shall accrue or be Allowed on any Claim during the period after the Petition Date, except as provided for in the DIP Order or under section 506(b) of the Bankruptcy Code.

2. Resolution of Disputed Claims.

Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Debtors and, after the Effective Date, the Reorganized Debtors, and any party in interest may make and file objections to Claims and shall serve a copy of

each objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than the latest of: (i)30 days after the Effective Date; (ii) 30 days after a proof of Claim with respect to the Claim objected to has been filed with the claims agent appointed in the Reorganization Cases; or (iii) such later date as may be fixed by the Bankruptcy Court, whether fixed or before or after the date specified in clauses (I) and (ii) above. From and after the Effective Date, all objections shall be litigated to a Final Order except to the extent Reorganized Granite elects to withdraw any such objection or Reorganized Granite and the claimant elect to compromise, settle, or otherwise resolve any such objection, in which event they may settle, compromise, or otherwise resolved any Disputed Claim without the necessity of Bankruptcy approval.

3. Estimation of Claims

The Debtors and, after the Effective Date, Reorganized, may request that the Bankruptcy Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors have previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including, without limitation, during the pendency of any

appeal relating to any such objection. If the Bankruptcy Court estimates any Disputed Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by Bankruptcy Court, subject to any rights pursuant to section 502(j) of the Bankruptcy Code (i) to have such Claim reconsidered and, if Allowed, (ii) to have the distribution on account thereof adjusted. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and not exclusive of one another. On and after the Confirmation Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved, without further order of the Bankruptcy Court, but in a manner consistent with the treatment of such Claims under the Plan.

4. Allowance of Disputed Claims.

If, on or after the Effective Date, any Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall, on the fifteenth Business Day of the first month following the month in which the Claim becomes an Allowed

Claim, make any distribution to the holder of such Allowed Claim in an aggregate amount sufficient to provide such holder with the amount that such holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date or any Subsequent Distribution Date.

PUBLIC DOCKET FOR SECOND CIRCUIT COURT OF APPEALS

PUBLIC DOCKET FOR
Second Circuit Court of Appeals

INDIV
CLOSED

Court of Appeals Docket #: 08-2717-bk

Nsuit: 422 STATUES-Bkrup Appeals 801

In Re: Granite Broadcasting Corporation v.

Appeal from: SDNY (NEW YORK CITY)

Filed: 6/3/08

Case type information:

Bankruptcy

District Court

None

Lower court information:

District: 07-cv-6217

Trial Judge: Colleen McMahon

MagJudge:

Date Filed: 07/05/07

Date order/judgment: 4/22/2008

Date NOA filed: 5/20/2008

Fee Status: IFP

Panel Assignment:

Panel: GC BDP PWH None

Date of decision:

Prior cases: NONE

Current cases: NONE

Docket as of January 27, 2009 9:44 am Page:1

Proceedings include all events. 08-2717-bk
In Re: Granite Broadcasting Corporation v.

INDIV CLOSED

Official Caption 1/

Docket No. [s] : 08-2717-bk

In Re: Granite Broadcasting Corporation
****
**
June Foster,

Creditor-Appellant,

v.
Granite Broadcasting Corporation,

Debtor-Appellee.

Authorized Abbreviated Caption 2/

Docket No. [s] : 08-2717-bk

In Re: Granite Broadcasting Corporation v

1/Fed. R. App. P. Rule 12 [a] and 32 [a].
2/ For use on correspondence and motions only

Proceedings include all events. 08-2717-bk
In Re: Granite Broadcasting Corporation v.

INDIV CLOSED

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Debtor-Appellee

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[LD ret]
Akin Gump Strauss Hauer & Feld LLP
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212-872-1096

June Foster
Creditor-Appellant

June Foster
n/a
P.O.Box 2134
San Leandro,CA 94577

Proceedings include all events. 08-2717-bk
In Re: Granite Broadcasting Corporation v.

INDIV
CLOSED

6/3/08	Copy of notice of appeal and district court docket entries on behalf of APPELLANT June Foster, filed (Entry date Jun 6 2008]
6/3/08	Copy of district court order RECEIVED. [Entry date Jun 6 2008]
6/3/08	Record on appeal filed. (Original papers of district court.) Volume: 1. [Entry date Jun 6 2008]
6/6/08	Letter sent to APPELLANT June Foster, giving 30 days from date to either pay the fee or file a motion for ifp. [Entry date Jun 6 2008]
6/6/08	Instructional Forms sent Pro Se litigant [Entry date Jun 6 2008]
6/9/08 records	Record on appeal received in room from team. [Entry date

6/13/08	Notice of appeal acknowledgement letter from Ira Dizengoff received. [Entry date Jun 16 2008]
6/18/08	Copy of district court order granting ifp filed. APPELLANT June Foster, [Entry date Jun 23 2008]
7/2/08	Appellant June Foster motion for assignment of counsel pro bono filed with proof of service. [Entry date Jul 3 2008]
7/14/08	APPELLEE Granite Broadcasting Corporation, disclosure letter pursuant to FRAP 26.1 RECEIVED. [Entry date Jul 15 2008]
7/14/08	Appellee Granite Broadcasting Corporation, response to motion and memorandum for request/appointment of counsel filed with proof of service. [Entry date Jul 15 2008]
7/22/08	Appellant June Foster reply to Appellee's response to motion and memorandum for request/appointment of counsel,

pursuant to Federal Rules of Appellant Procedure, rule 27 (a)(4), filed with proof of service. [Entry date Jul 23 2008]

9/10/08 Order FILED DENYING motion assignment of counsel pro bono by Appellant June Foster, dated 7/2/2008. Appellant, pro se, moves for appointment of counsel. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it lacks an arguable basis in fact or law. See Neitzke v. Williams, 490 U.S. 319,325 (1989); 28 U.S.C. 1915(e). (Before GC,BDP, PWH) [Entry date Sep 10 2008]

Proceedings include all events. 08-2717-bk
In Re: Granite Broadcasting Corporation v.

INDIV CLOSED

9/10/08	This appeal is disposed by the order dated 9/10/08 [Entry date Sep 10 2008]
9/10/08	Notice to all parties of three judge order dated 9/10/08 [Entry date Sep 10 2008]
9/24/08	Appellant June Foster for a 30 day extended time to file papers to be relieved from dismissal of appeal filed with proof of service. [Entry date Sep 29 2008]
10/7/08	Order FILED GRANTING motion extended time by Appellant June Foster, dated 9/24/08. Appellant, pro se, moves for an extension of time to file a petition of rehearing. See Fed. R. App P. 40. Upon due consideration, it is hereby ORDERED that the motion is GRANTED. See Marino v. Ortiz, 888 F. 2d 12,13 (2d Cir. 1989) (per curiam); Fed R. App. P. 26(b). Appellant has 30 days from the date

	of this Order to file her petition. (Before: GC,BDP,PWH) [Entry date Oct 7 2008]
10/7/08	Notice to all parties of the three judge order dated 10/7/08 [Entry date Oct 7 2008]
11/6/08	Appellant June Foster motion for "relief from Sua Ponte Dismissal" construed as a motion for reconsideration filed with proof of service. [Entry date Nov 7 2008]
11/18/08	Order FILED. IT IS HEREBY ORDERED that the motion by pro se Appellant for relief from sua ponte dismissal is DENIED. Before: GC,BDP,PWH, Circuit Judges. Endorsed by JP, Mtns. Staff Atty dated 11/18/08. Extended Mandate due is 11/25/2008. NO FURTHER EXTENSIONS. [Entry date Nov 18 2008]
11/18/08	Notice to counsel and pro se litigant: re: Order dated 11/18/08. [Entry date Nov 18 2008]
11/25/08	Certified copy of order dated 9/10/08 disposing of the appeal issued to

	SDNY (NYC) district court. [Mandate] [Entry date Nov 25 2008]
11/25/08	Notice to counsel: re: Mandate [Entry date Nov 25 2008]
11/25/08	Appellant June Foster motion for extended time to file "Petition for Rehearing or En Banc," filed with proof of service. [Entry date Nov 26 2008]

Proceedings include all events. 08-2717-bk
In Re: Granite Broadcasting Corporation v.

INDIV CLOSED

11/26/08	Order filed. The Court has received a letter from Appellant dated November 17, 2008, addressed to a member of the panel. Because the Court had entered its order denying the Appellant's November 6, 2008 motion for relief from sua ponte dismissal without having had the benefit of the Appellant's November 17, 2008 supplemental argument, the court will treat that letter as a request for reconsideration of its disposition of the November 6 motion, and that request for reconsideration is hereby DENIED. Before: GC,BDP, PWH, Circuit Judges. Endorsed by JP, Mtns. Staff Atty. Dated 11/26/08 [Entry date Nov 26 2008]
11/26/08	Notice to counsel and pro se litigant: re: Order dated 11/26/08. [Entry date Nov 26 2008]
11/26/08	Order FILED. IT IS HEREBY

	ORDERED THAT the motion is DENIED as moot in light of mandate issued on 11/25/08. Endorsed by JP Mtns. Staff Atty. Dated 11/26/08. [Entry date Nov 26 2008]
11/26/08	Notice to counsel and pro se litigant: re: Order dated 11/26/08 [Entry date Nov 26 2008]
12/2/08	Appellant June Foster motion to recall mandate, "Nunc Pro Tunc Order," filed with proof of service. [Entry date Dec 3 2008]
12/5/08	Mandate receipt returned from the district court. [Entry date Dec 5 2008]
12/15/08	Order FILED. IT IS HEREBY ORDERED that Appellant's motion for "nunc pro tunc order to correct the premature issuance of mandate" is DENIED. Before: GC,BDP,PWH, Circuit Judge. Endorsed by JP, Mtns. Staff Atty. Dated 12/15/08. [entry date Dec 15 2008]
12/15/08	Notice to counsel and pro se litigant: re: Order date 12/15/08.

[Entry date Dec 15 2008]

12/23/08 Record on appeal RETURNED to lower court. (1 vol.) 500 pearl St.
[Entry date Dec 23 2008]

129

(2)

Docket no. 08-1312

Supreme Court, U.S.
FILED
MAY 18 2009
OFFICE OF THE CLERK

THE SUPREME COURT OF

THE UNITED STATES

JUNE FOSTER,
Petitioner,

v.

GRANITE BROADCASTING CORPORATION, ET AL
Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Second Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

June Foster
P.O. Box 2134
San Leandro, CA 94577
510-614-8156

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT.....2

I. NEW U.S. SUPREME COURT CASES SUPPORTS THE PRINCIPLE 'THE LAW IS ORDAINED TO BE FOLLOWED'.....2

II. READING TITLE *28 USC SECTION 1915,* ACCORDING TO ITS TERMS AND AS A WHOLE, IN LIGHT OF *CARCIERI AND CORLEY* CASES, DEMONSTRATES A CLEAR ERRONEOUS LEGAL STANDING OF A SUA DISMISSAL OF MY INFORMA PAUPERIS APPEAL.....7

CONCLUSION..... ...10

TABLE OF AUTHORITIES

Carcieri v. Salazar, 555 U.S. _____(2009)

.....1, 3

Corley v. United States, 556 U.S. _____(2009)

.....1, 5

PETITIONER'S SUPPLEMENTAL BRIEF

I, petitioner, herein respectfully ask this Court to take consideration of new cases not available at the time of my last filing of a Petition For A Writ of Certiorari on February 10, 2009, pursuant to *Rule 15(8).* In light of United States Supreme Court's brand new decisions involving erroneous reading and incorrect application of federal statues, *Carcieri v. Salazar*, 555 U.S. _____(2009) and *Corley v. United States*, 556 U.S. _____(2009), I ask this Court to grant my Petition.

Carcieri and *Corley* rulings were rendered by this Court less than six months after the Second Circuit Court of Appeals sua ponte dismissed my appeal involving Chapter 11 bankruptcy law. *Carcieri*

decision came two weeks after I filed my Petition, which is docketed for February 10, 2009[1]. *Corley* decision appears less than 60 days after my Petition was filed.

ARGUMENT

I. NEW U.S. SUPREME COURT CASES SUPPORT THE PRINCIPLE 'THE LAW IS ORDAINED TO BE FOLLOWED'

On February 24, 2009, United States Supreme Justice Clarence Thomas asserted in delivering the opinion in *Carcieri, Governor of Rhode Island, et al*

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[1] I, petitioner, had to correct the format of my petition, resubmit it, without changing any substance, pursuant to Rule 14(5).

v. Salazar, Secretary of the Interior, et al. Certiorari To the United States Court of Appeals For the First Circuit. No. 07-526. Argued November 3, 2008--Decided February 24, 2009. Cited as 555 U.S. _____(2009) (slip opinion) p. 2 and 7:

> "When a statute's text is plain and unambiguous, *United States* v. *Gonzales*, 520 U. S. 1, 4, the statute must be applied according to its terms, see, *e.g.*, *Dodd* v. *United States*, 545 U. S. 353, 359[2]...This case requires us to apply settled principles of statutory construction under which we must first determine whether the statutory text is plain and unambiguous. *United States* v. *Gonzales*, 520 U. S. 1, 4 (1997). If it is, we must apply the statute according to its terms. See, *e.g.*, *Dodd* v. *United States*, 545 U. S. 353, 359 (2005); *Lamie* v. *United States Trustee*, 540 U. S. 526, 5 34

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[2] Found in the *Held* section of the slip opinion, part (a) page 2

(2004); *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 6 (2000); *Caminetti* v. *United States*, 242 U. S. 470, 485 (1917).[3]"

According to the slip opinion that reversed the judgment, "Roberts, C. J., and SCALIA, KENNEDY, BREYER, and ALITO, JJ., joined. BREYER, J., filed a concurring opinion. SOUTER, J., filed an opinion concurring inpart and dissenting in part, in which GINSBURG, J., joined. STEVENS, J., filed a dissenting opinion."

Then, on April 6, 2009, United States Supreme Court Justice David H. Souter asserted in delivering the opinion in *Corley v. United States*. Certiorari To The United States Court Of Appeals For The Third

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[3] Slip opinion, page 7

Circuit. No 07-10441. Argued January 21, 2009---

Decided April 6, 2009. Cited as 556 U.S.

_____(2009) (slip opinion), page 2, 9-10:

> "...the basic interpretive canon that " '[a] statute should be construed [to give effect] to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.' " *Hibbs* v. *Winn*, 542 U. S. 88, 101[4]. .. the most basic interpretive canons, that "'[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .'" *Hibbs* v. *Winn*, 542 U. S. 88, 101 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction §46.06, pp.181–186 (rev. 6th ed. 2000)). Footnote 5: the cardinal rule that a statue is to be read as a whole, *King* v. *St. Vincent's Hospital*, 502 U.S. 215,

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4 Found in slip opinion in *Held* section (1) page 2

221 (1991).[5]"

According to the slip opinion that vacated and remanded the judgment, "STEVENS, KENNEDY, GINSBURG, and BREYER, JJ., joined. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA and THOMAS, JJ., joined."

These new opinions relates to my case in this Court because I pose questions fairly raised in my Petition. I assert strongly in my Petition Title *28 U.S.C. section 1915* should have been properly enforced, construed, and applied in my appeal by the Second Circuit. If that would have happened, then the equal protection under the law and due process

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[5] Slip opinion pages 9-10

would be a reality and realized and not just some high-minded principle. Preamble to the United States Constitution declares the law is ordained to followed, which includes *28 U.S.C. section 1915*. Said statue was not followed and so I suffer.

II. READING TITLE *28 USC SECTION 1915*, ACCORDING TO ITS TERMS AND AS A WHOLE, IN LIGHT OF *Carcieri AND Corley* CASES, DEMONSTRATES A CLEAR ERRONEOUS LEGAL STANDING OF A SUA DISMISSAL OF MY INFORMA PAUPERIS APPEAL

Beginning with the language of *28 U.S.C. section 1915* , taken together with its terms and as a whole, I, a poor person: (1) have access to ALL federal courts, (2) had a lower court rule my claim/issue/appeal was meritious, (3) maintained informa pauperis status through U.S. District Court,

(4) could have been appointed pro bono counsel and(

5) stated claims entitling a grant of relief .

All Access to Federal Courts

Title *28 U.S.C. section 1915(a)(1)* Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

Action Already Ruled Meritious By Lower Court Therefore Not Frivolous Under Statue

Title 28 U.S.C. section 1915 (e)(2)(B)(i) the action or appeal - is frivolous or malicious;

Informa Pauperis Status Maintained Through U.S. District Court

Title 28 U.S.C. section 1915 (a) (3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

Appointment Of Pro Bono Counsel

Title 28 U.S.C. section 1915 (e)(1) The court may request an attorney to represent any person unable to afford counsel.

Issues and Claims Stated on Appeal Entitled Relief

Title 28 U.S.C. section 1915 (e)(2)(B)(ii) the action or appeal fails to state a claim on which relief may be granted;

In light of *Carcieri v. Salazar,* cited as 555 U.S. _____(2009) (slip opinion), "When a statute's text is plain and unambiguous, the statute must be applied according to its terms." and *Corley v. United States,* cited as 556 U.S. _____(2009) slip opinion "...the basic interpretive canon that " '[a] statute should be construed [to give effect] to all its

provisions," my appeal should not have been sua ponte dismissed under *title 28 U.S.C. section 1915.*

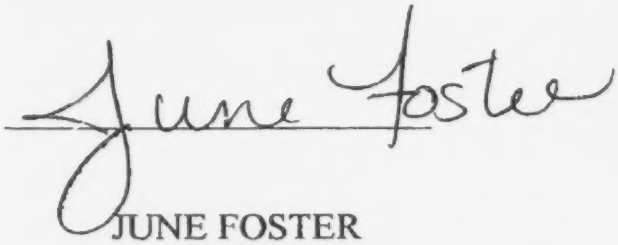
I, petitioner, was entitled to appellate review of a District Court's final ruling on bankruptcy orders. But, the Second Circuit Court of Appeals killed that right. It simply refused to construe and apply the terms of the informa pauperis statue to my appeal. As a result, I was thereby egregiously deprived of my right to due process and equal protection under the law to have a review. The denial of appellate review by judicial hands is in violation of constitutional principles.

CONCLUSION

For the reasons set forth above, as well as

the ones contained in Petition, I pray that this Court grants my Petition For Writ of Certiorari.

May 18, 2009 Respectfully Submitted,



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